

***United States Court of Appeals
for the Second Circuit***



APPENDIX

76-6188

In The
United States Court of Appeals
For The Second Circuit

UNITED STATES OF AMERICA and ROBERT RAGONE,
Special Agent, Internal Revenue Service,
Petitioners-Appellees,

vs.

MANUFACTURERS & TRADERS BANK, (formerly First
Empire Bank—New York) and JAMES A. KYPRIOS, Vice
President, International Banking, Manufacturers & Traders
Bank,

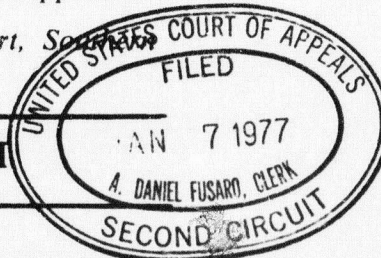
Respondents,

ALLAN H. APPLESTEIN,

Proposed Intervenor-Appellant.

*On Appeal from the United States District Court, Southern
District of New York*

APPENDIX FOR APPELLANT



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M 8-85

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M 8-85

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Oct. 8-76	MARCUS MERCANTILE CO., INC. -v- CAPIN ENTERPRISES--Filed notice to take deposition of Samuel Bernstein, et ano--(Dist. of Arizona)
Oct. 8-76	CORAL GABLES IMPORTED MOTORCARS, INC. -v- FIAT DISTRIBUTORS, INC.--Filed notice to take deposition Bernard Silveria, et ano--(So. Dist. of Fla.)
Oct. 12-76	FOR MOST-McKESSON, INC. -v- VICTOR POSNER, et al--Filed affdvt. & show cause order to compel Colin-Hochstein Co. to produce its representative to complete testimony, etc.--Oct. 10-13-76-
Oct. 12-76	THOMAS R. LAUGHLIN, et al -v- FRANK WELLS, et al--Filed notice to take deposition of Anthony D. Thomopoulos--(Central Dist. of Calif.)
Oct. 12-76	THOMAS R. LAUGHLIN, et al -v- FRANK WELLS, et al--Filed notice to take deposition of Robert Daly--(Central Dist. of Calif.)
Oct. 12-76	ORCHARD CORP. OF AMERICA -v- QUORUM INDUS., INC.--Filed notice to take depositions of Hel Weisz, et al--(SD of Mo.-Eastern Div.)
Oct. 12-76	BANKERS TRUST CO. -v- TRANSAMERICA TITLE INS. CO.--Filed notice to take depositions of William D. Dobrowolski, et al--(Dist. of Colo.)
Oct. 12-76	OHIO-SEALY MATTRESS MFG. CO., et al -v- SEALE, INC., et al--Filed notice to take depositions of Theodore Slowik & Henry Golding--(ND of Ill.-Eastern Div.)
Oct. 12-76	JONATHAN LOGAN, INC. -v- WILLIAM BALBINDER--Filed stip. & order withdrawing subpoena and dismissing motion to quash--Buffy, J.
Oct. 12-76	IN RE: JAPANESE ELECTRONIC PRODUCTS -Anti-Trust Litigation--Filed stip. & order adjourning motion to quash subpoena to 11-9-76--Buffy, J.
Oct. 12-76	MARCUS MERCANTILE CO., INC. -v- CAPIN ENTERPRISES--Filed notice to take deposition of Gaucho Sportswear, Inc.--(Dist. of Arizona)
Oct. 12-76	SCM CORP. -v- YEROX CORP.--Filed notice to take deposition of Olivetti Corp. by officer, etc.--(Dist. of Conn.)
Oct. 13-76	NASSAU TRUST CO. -v- WILLIAM MAIDMAN--Filed notice to take deposition Richard Maidman--(SD of Fla.)
Oct. 13-76	ROBERT CLAYTON -v- FRANK A. DOUGLAS--Filed notice of taking deposition of Harry Stein, et ano--(Dist. of Minn.-3rd Div.)
Oct. 13-76	COOLIDGE BANK & TRUST CO. -v- ECONOMIC PLYWOOD CORP.--Filed notice to take deposition of officers in charge of Economic Plywood Cor., (Dist. of Mass.)
Oct. 13-76	ALFRED AVIAS -v- JAMES P. WHITE -- Filed notice to take depositions of Lawrence Newman & William Pincus--(Dist. of Delaware)
Oct. 13-76	THOMAS R. LAUGHLIN, et al -v- FRANK WELLS - Filed notice to take deposition of Arnold Bernstein--(Central Dist. of Calif.)
Oct. 14-76	IN RE: FOREMOST-McKESSON, INC. -v- VICTOR POSNER--Filed memo endorsed on show cause order filed 10-12-76--Motion to produce Caroline Woodruff for deposition on behalf of plfff. is granted.--Haight, J.
Oct. 14-76	SOL NEIN CORBIN -v- FEDERAL DEPOSIT INS. CORP.--Filed notice to take deposition of Sol Nein Corbin & Corwell, Esqs. by Hamilton Potter--(ED NY)
Oct. 14-76	FOREMOST-McKESSON, INC. -v- VICTOR POSNER--Filed notice to take deposition of Victor Posner--(ND of Calif.)
Oct. 14-76	FOREMOST-McKESSON, INC. -v- VICTOR POSNER--Filed notice to take deposition of Morgan Stanley & Co.--(ND of Calif.)
Oct. 14-76	FOREMOST-McKESSON, INC. -v- VICTOR POSNER--Filed notice to take deposition of Herger Johnston--(ND of Calif.)
Oct. 14-76	GRAY TOOL CO. -v- PETROLANE INC.--Filed affdvt. of Robert Sparanese re: service of subpoena for deposition
Oct. 14-76	PANOLARE, INC. -v- BETSON BROS. STORES, INC.--Filed notice to take deposition of Baker's Shoe Store--(ND of Ill.-Eastern Div.)
Oct. 15-76	CALIFORNIA COMPUTER PRODS., INC. -v- IBM--Filed notice to take deposition of Frank Laughter--(ND of Calif.)

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Oct. 15-76	USA -v- MANUFACTURERS & TRADERS BANK--Filed affdvt. & show cause order for an order to intervene and to enjoin IRS Comm.--ret. 10-20-76
Oct. 15-76	USA -v- MANUFACTURERS & TRADERS BANK--Filed affdvt. Answer of the proposed intervenor Allen E. Applestein
Oct. 15-76	USA -v- MANUFACTURERS & TRADERS BANK--Filed affdvt. & show cause order to compel respondents to comply with IRS summons-ret. 10-13-76
Oct. 15-76	USA -v- MANUFACTURERS & TRADERS BANK--Filed government's Memorandum of law.
Oct. 18-76	USA -v- MANUFACTURERS & TRADERS BANK--Filed stip. & order adjourning show cause order to 10-20-76
Oct. 18-76	MORRISON GRAIN CO., INC.-v- UTICA MUTUAL INS. CO.--Filed notice to take deposition of Superintendence Co., Inc.--(Middle Dist. of Fla.-Tampa Div.)
Oct. 18-76	MORRISON GRAIN CO., INC. -v- UTICA MUTUAL INS. CO.--Filed notice to take deposition of Kurt Klein, et al--(Middle Dist. of Fla.-Tampa Div.)
Oct. 18-76	US for Use of DAILY ENGINEERING CO. -v- US FIDELITY & GUARANTY CO.--Filed notice to take deposition of Oswald T. Adenac--(Central Dist. of Calif.)
Oct. 18-76	US for use of DAILY ENGINEERING CO. -v- US FIDELITY & GUARANTY CO.--Filed notice to take deposition of Irving Kuesse--(Cent'l D. of Calif.)
Oct. 18-76	IN RE: INTERCONTINENTAL PROPERTIES MANAGEMENT, S.A.--Filed notice to take deposition of John S. Samuels, III--(ED of Va.-Norfolk Div.)
Oct. 18-76	CRIME CHECK & COMMUNICATIONS CORP. -v- ROYAL ELECTRONICS CORP.--Filed notice to take deposition of Martin Suss--(Dist. of Maryland)
Oct. 19-76	IN RE: INTERCONTINENTAL PROPERTIES MANAGEMENT, S.A.--Filed notice to take deposition of Bureau Veritas--(ED of Va.-Norfolk Div.)
Oct. 19-76	PANOLARE, INC. -v- EDISON BIOS. STORES, INC.--Filed notice to take deposition of Lorraine Papp--(ND of Ill.-Eastern Div.)
Oct. 20-76	U.S.A. -v- MANUFACTURERS & TRADERS BANK-- Filed Memorandum of Law on behalf of intervenor in support of application for intervention.
Oct. 19-76	CHURCH & DWIGHT CO., INC. -v- HILBERT CURTIS INDUS., et al--Filed notice to take depositions of Hans Carstensen & Dale Wyatt--(WD of NY)
Oct. 20-76	COLUMBIA RECORD PRODS -v- HOT WAX RECORDS, INC.--Filed notice to take deposition of Arthur Kass--(ED of Mich.-So.Div.)
Oct. 20-76	CALIF. COMPUTER PRODUCTS, INC. -v- IBM--Filed notice to take deposition of Timothy J. Walsh--(ND of Calif.)
Oct. 21-76	SCM CORP. -v- XEROX CORP.--Filed notice to take deposition of Olivetti Corp.--(Dist. of Conn.)
Oct. 22-76	NLRB -v- FREDERICK DOUGAN--Filed affdvt. of Robert M. Stone in opposition to application re: subpoena duces tecum
Oct. 28-76	NLRB -v- FREDERICK DOUGAN--Filed NLRB's affdvt. & show cause order to enforce subpoena-ret. 10-26-76--Gagliardi, J.
Oct. 28-76	NLRB -v- FREDERICK DOUGAN--Filed memo endorsed on show cause order filed 10-28-76--application is granted and respondent is ordered to obey & comply with the subpoena--Gagliardi, J.
Oct. 28-76	NLRB -v- FREDERICK DOUGAN--Filed brief for employer-relator in support of application for enforcement of subpoena duces tecum
Oct. 28-76	NLRB -v- FREDERICK DOUGAN--Filed affdvt. of Robert M. Stone in opposition
Oct. 22-76	CSL INDUS., INC. -v- AUTOMATION SYSTEMS, INC.--Filed notice to take deposition of Arista Enterprises by A.E. Leifer--SD of Ill.-No.Div.)
Oct. 22-76	IN RE: BOISE CASCADE SEC. LITIGATION--Filed notice to take deposition of Fred Stahl--(WD of Wash.)

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DATE	PROCEEDINGS
Oct. 22-76	HARTFORD NAT'L BANK & TRUST CO. -v- UNIVERSAL GAS & OIL CO., INC.--Filed notice to take deposition of Ira Gailden-(Dist. of Conn.)
Oct. 26-76	SCI. CORP. -v- XEROX CORP.--Filed notice to take deposition of Joseph A. Pascucci--(Dist. of Conn.)
Oct. 26-76	CELARESE CORP. -v- GEN'L ELECTRIC CO.--Filed notice to take depositions of Harold Hendrickson & William T. Freed--(SD of Ind.-Evansville Div.)
Oct. 26-76	CELARESE CORP. -v- GEN'L ELECTRIC CO.--Filed notice to take deposition of Hamilton Campos--(SD of Ind.-Evansville Div.)
Oct. 26-76	FANCLAY, INC. -v- EDISON BROS., STORES, INC.--Filed notice to take deposition of Trahey Rogers--(SD of Ill.-Eastern Div.)
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Oct. 27-76	BOWMAR INSTRUMENT CORP. -v- TEXAS INSTRUMENTS INC.--Filed notice to take deposition of IT&T--(SD of Ind.-Fort Wayne Div.)
Oct. 27-76	SCI. CORP. -v- XEROX CORP.--Filed notice to take deposition of Dr. Iratton R. Barnes--(Dist. of Conn.)
Oct. 27-76	HAROLD M. GAY, JR. -v- STEPHEN M. BROW--Filed request for the production of documents--(Dist. of N.J.-Trenton) Capt. R.M. Finlay, et al
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Oct. 28-76	AUTOMATION SCIENCES, INC. -v- FUJITSU LTD.--Filed notice to take deposition of Mori Sinoto--(Dist. of N.J.)
Oct. 28-76	RUTH S. KLEINMAN -v- HARPER SIBLEY, JR., et al--Filed notice to take deposition of Chase Manhattan Bank by Eleanor Hoffman--(SD of Pa.)
Oct. 28-76	RUTH S. KLEINMAN -v- HARPER SIBLEY, JR., et al--Filed notice to take deposition of Moody's Investors Service by officers--(SD of Pa.)
Oct. 29-76	ALLIANCE MACHINE CO. -v- CHRIS-CRAFT INDUS., INC.--Filed notice to take depositions of Alfred Hollender, et al--(SD of Fla.)
Oct. 29-76	CSL INDUS., INC. -v- AUTOMATION SYSTEMS, I.C.--Filed notice to take deposition of Arista Corp.--(SD of Ill.-Nor. Div.)
Nov. 1-76	WILLIAM GALLAGHER -v- SHEARSON HAYDEN STONE, INC.--Filed notice to take deposition of Michele Geddes--(Dist. of Columbia)
Nov. 1-76	WILLIAM GALLAGHER -v- SHEARSON HAYDEN STONE, INC.--Filed notice to take deposition of Alger B. Chapman--(Dist. of Columbia)
Nov. 1-76	HONGRAM INDUS., INC. -v- ROYAL INDUS., INC.--Filed notice to take deposition of Philip L. Ball-et al--(Central Dist. of Calif.)
Nov. 1-76	WILLIAM GALLAGHER -v- SHEARSON HAYDEN STONE, INC.--Filed notice to take deposition of Stephen H. Fields--(Dist. of Columbia)
Nov. 1-76	HUNT-WESSON FOODS, INC. -v- RAGU FOODS, INC.--Filed notice to take depositions of Custodian of Records, etc.--(Central D. of Calif.)
Nov. 1-76	WILLIAM GALLAGHER -v- SHEARSON HAYDEN STONE, INC.--Filed notice to take deposition of Arnold Katz--(Dist. of Columbia)
Nov. 1-76	USA -v- MANUFACTURERS & TRADERS BANK--Filed supplemental affavt. of Robert Ragone--
Nov. 1-76	USA -v- MANUFACTURERS & TRADERS BANK--Filed affavt. of Richard E. Jaffe--
Nov. 1-76	USA -v- MANUFACTURERS & TRADERS BANK--Filed affavt. of Milton Billig--
Nov. 1-76	USA -v- MANUFACTURERS & TRADERS BANK--Filed memorandum of law in opposition to application for intervention
Nov. 1-76	IN RE: U.S. FINANCIAL SECURITIES LITIGATION--Filed notice to take deposition of J. Courtney Ivey--(SD of Calif.)
Nov. 1-76	ANITY LEATHER PRODUCTS CO., INC. -v- A & L SEAMON, INC.--Filed notice of taking deposition of Burton Seamon, et al--(ED of NY)
Nov. 3-76	ROYAL INDUS., INC. -v- HONGRAM INDUS., INC.--Filed notice of taking deposition s of Edward D. Patcek, et al--(Central Dist. of Calif.)

DATE	PROCEEDINGS
Nov. 3-76	NO. OGRAM INDUS. -v- ROYAL INDUS., INC.--Filed designation & notice to take deposition of Mr. Lipper--(Central Dist. of Calif.)
Nov. 3-76	LINDA K. ARVIN -v- TWO LACES, INC.--Filed notice to take deposition of F. H. Roberts--(Middle Dist. of Fla.-Jacksonville Div.)
Nov. 3-76	NATIONAL FOOD CORP. -v- DIAMOND INT'L CORP.--Filed notice to take deposition of Single Service Institute--(D. of Wash. at Seattle)
Nov. 3-76	SOL NEIL CORBIN--v- FEDERAL DEPOSIT INS. CORP.--Filed notice to take deposition of Edward Bransilver--(ED of NY)
Nov. 3-76	PERIOD DRILLING CO. -v- FAR EAST-LIVINGSTON SHIP BUILDING CO.--Filed notice to take deposition of witness of the American Bureau of Shipping--(ND of Texas-Dallas Div.)
Nov. 3-76	ALFRED AVINS -v- JAMES P. WHITE--Filed notice to take deposition of Adrienne A. Radwin--(Dist. of Delaware)
Nov. 3-76	KODIMORG-E. CORP. -v- VANGUARD INC.--Filed notice to take deposition of Russell Houldin--(Central D. of Calif.)
Nov. 1-76	NORFOLK MUTUALS, INC. -v- GILMAN & TAYLOR CORP.--Filed notice to take deposition of service re: notice of intention to take deposition--(ED of Pa.)
Nov. 4-76	HANDELL & CORSINI, INC. -v- TISHMAN CONST. CO. OF PA.--Filed affdvt. & show cause order holding Eugene Sherry & Julian Harp and the firm of Parkas, Barron & Partners in contempt-ret. 11-11-76 at 4 P.M. in Rm. 506
Nov. 4-76	CORLENGUY KENTUCKY, INC. -v- H.M. CALLEMAN--Filed notice to take deposition of David Miller--(ED of Kentucky at London)
Nov. 4-76	CORLENGUY KENTUCKY, INC. -v- H.M. CALLEMAN--Filed notice to take deposition of Gerald Adler--(ED of Ky. at London)
Nov. 4-76	P.A.N. GENERAL AGENCIES, INC. -v- JOSEPH W. HUDSON--Filed notice to take deposition of Alfred Miller--(D. of So. Car.-Spartanburg Div.)
Nov. 5-76	PHILLIPS-FOSQUE CORP. -v- LEGGETT & PLATT, INC. --Filed notice to take deposition of Goldman, Sachs & Co. by its custodian of records--(Dist. of Columbia)
Nov. 5-76	PHILLIPS-FOSQUE CORP. -v- LEGGETT & PLATT, INC.--Filed notice to take deposition of Cowen & Co. by its custodian of records--(D. of Columbia)
Nov. 5-76	PHILLIPS-FOSQUE CORP. -v- LEGGETT & PLATT, INC.--Filed notice to take deposition of Bache, Halsey, Stuart, Inc. by its custodian of records--(D. of Columbia)
Nov. 5-76	PHILLIPS-FOSQUE CORP. -v- LEGGETT & PLATT, INC.--Filed notice to take deposition of Reynolds Sec., Inc. by its custodian of records--(Dist. of Columbia)
Nov. 5-76	PHILLIPS-FOSQUE CORP. -v- LEGGETT & PLATT, INC.--Filed notice to take deposition of Loeb, Rhodes & Co. by its custodian of records--(D. of Columbia)
Nov. 5-76	SOL NEIL CORBIN -v- FED. DEPOSIT INS. CORP.--Filed notice to take deposition of Joseph S. Orban, Jr.--(ED of NY)
Nov. 5-76	IN RE: IBM PERIPHERAL EDP--Filed notice to take deposition of William Turner--(ND of Calif.)
Nov. 5-76	IN RE: IBM PERIPHERAL EDP--Filed notice to take deposition of Edward Brennan--(ND of Calif.)
Nov. 5-76	IN RE: IBM PERIPHERAL EDP--Filed notice to take deposition of Robert Kaufhold--(ND of Calif.)
Nov. 5-76	PAUL ABBEY PRODUCTS, INC. -v- WILSON & CO., INC.--Filed notice to take deposition of J. Gabriel Food Co.--(ED of NY)
Nov. 5-76	ESTHER BLUSTEIN -v- PLAZA DRIVE-IN BANK--Filed notice to take deposition of Bank of NY and Transfer Agents, including Walter Harris--(ND of Ill.-Eastern Div.)
Nov. 5-76	PHILLIPS-FOSQUE CORP. -v- LEGGETT & PLATT, INC.--Filed notice to take deposition of N.C.C. & Co. by its custodian of records--(D. of Columbia)

DATE	PROCEEDINGS
Nov. 5-76	PHILLIPS-FOSQUE CORP. -v- LEGGETT & PLATT, INC.--Filed notice to take deposition of E.R. Hutton & Co., Inc. by its custodian of records--(Dist. of Columbia)
Nov. 5-76	PHILLIPS-FOSQUE CORP. -v- LEGGETT & PLATT, INC.--Filed notice to take deposition of White & Case--(Dist. of Columbia)
Nov. 5-76	PHILLIPS-FOSQUE CORP. -v- LEGGETT & PLATT, INC.--Filed notice to take deposition of Lewco Sec. Corp. by its custodian of records--(Dist. of Columbia)
Nov. 5-76	PHILLIPS-FOSQUE CORP. -v- LEGGETT & PLATT, INC.--Filed notice to take deposition of White & Case--(Dist. of Columbia)
Nov. 5-76	PHILLIPS-FOSQUE CORP. -v- LEGGETT & PLATT, INC.--Filed notice to take deposition of the Depository Trust Co.--(Dist. of Columbia)
Nov. 5-76	PHILLIPS-FOSQUE CORP. -v- LEGGETT & PLATT, INC.--Filed notice to take deposition of Thomson & McKinnon Auchincloss Rohlmeyer, Inc.--(Dist. of Columbia)
Nov. 5-76	PHILLIPS-FOSQUE CORP. -v- LEGGETT & PLATT, INC.--Filed notice to take deposition of White Weld & Co., Inc.--(Dist. of Columbia)
Nov. 5-76	PHILLIPS-FOSQUE CORP. -v- LEGGETT & PLATT, INC.--Filed notice to take deposition of Norte & Co.--(Dist. of Columbia)
Nov. 5-76	PHILLIPS-FOSQUE CORP. -v- LEGGETT & PLATT, INC.--Filed notice to take deposition of Merrill Lynch, Pierce, Fenner & Smith, Inc.--(Dist. of Columbia)
Nov. 5-76	PHILLIPS-FOSQUE CORP. -v- LEGGETT & PLATT, INC.--Filed notice to take deposition of Paine Webber Jackson & Curtis Inc.--(Dist. of Columbia)
Nov. 8-76	THE COLEMAN CO., INC. -v- STEPHEN P. HARR--Filed notice to take deposition of Goldman, Sachs & Co.--(SD of Ohio-Western Div.)
Nov. 8-76	THE COLEMAN CO., INC. -v- STEPHEN P. HARR--Filed notice to take deposition of Dean Witter & Co.--(SD of Ohio-East. Div.)
Nov. 8-76	LENTRO-VEND CORP. -v- THE VENDO CO.--Filed notice to take deposition of Victor Lavay--(ND of Ill-Eastern Div.)
Nov. 8-76	LINCOLN PULP & PAPER CO., INC. -v- DRAYO CORP.--Filed notice to take deposition of John D. Smyers, et al--(D of Maine-No. Div.)
Nov. 9-76	USA -v- MANUFACTURERS & TRADERS BANK--Filed reply memorandum of law in support of application for intervention
Nov. 9-76	ROYAL INDUS., INC. -v- MONOGRAM INDUS., INC.--Filed notice to take depositions of William Frank, et al--(Central D. of Calif.)
Nov. 9-76	FORD MOTOR CO. -v- AUTO SUPPLY CO., INC.--Filed notice to take deposition of A & M Trading Co., Inc.--(Dist. of Neb.)
Nov. 9-76	R.A. WEAVER & ASSOC., INC. -v- HAAS & HAYNIE CORP.--Filed notice to take depositions of David Wallace, et al--(Dist. of Columbia)
Nov. 9-76	NLRB -v- FREDERICK DOUGAN--Filed copy of memorandum end. dated 10-27-
Nov. 9-76	SOL NEIL CORBIN -v- FED. DEPOSITORS CORP.--Filed notice to take deposition of Frank Wille--(ED of NY)
Nov. 10-76	ICI COMMUNICATIONS CORP. -v- AT&T--Filed notice to take deposition of European-American Bank & Trust Co.--(ND of Ill-Eastern Div.)
Nov. 10-76	ICI COMMUNICATIONS CORP. -v- AT&T--Filed notice to take deposition of First National City Bank--(ND of Ill-Eastern Div.)
Nov. 10-76	ICI COMMUNICATIONS CORP. -v- AT&T--Filed notice to take deposition of Chase Manhattan Bank--(ND of Ill-Eastern Div.)
Nov. 10-76	ICI COMMUNICATIONS CORP. -v- AT&T--Filed notice to take deposition of Manufacturers Hanover Trust Co.--(ND of Ill-Eastern Div.)
Nov. 10-76	ICI COMMUNICATIONS CORP. -v- AT&T--Filed notice to take deposition of Chemical Bank--(ND of Ill-Eastern Div.)

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DATE	PROCEEDINGS
Nov. 10-76	PENN GENERAL AGENCIES, INC. -v- JOSEPH J. HUNSON--Filed notice to take deposition of Jerome Hinkoff, et ano--(D. of Co. Car.-3d Southern Div.)
Nov. 10-76	ELAINE BENVENUTO -v- JOHN A. BENVENUTO--Filed notice to take deposition of New York Medical College--(Dist. of Columbia)
Nov. 10-76	ELAINE BENVENUTO -v- JOHN A. BENVENUTO--Filed notice to take deposition of Dr. Alfred H. Freedman--(Dist. of Columbia)
Nov. 11-76	NAT'L LABOR RELATIONS BD.-v- FREDERIC DOUBAL--Filed respondent's notice of appeal from order enforcement of subpoena duces tecum--mailed copy to EMB & Jackson Lewis Schnitzler & Leupman
Nov. 11-76	ROYAL INDUS., INC. -v- MEMORIAL INDUS., INC.--Filed notice to take deposition of Ed Hajja, et ano--(Central Dist. of Calif.)
Nov. 11-76	EASTERN ASSOCIATED COAL CORP. -v- AETNA CASUALTY & SURETY CO.--Filed notice to take deposition of J.H. Iras, Jr.--(WD of Pa.)
Nov. 11-76	EASTERN ASSOCIATED COAL CORP. -v- AETNA CASUALTY & SURETY CO.--Filed notice to take deposition of March & McClellan, Inc.--(WD of Pa.)
Nov. 11-76	VERNON H. BOYLES -v- LAWRENCE R. DOLBE--Filed notice to take deposition of Teachers Ins. & Annuity Assoc. of Amer.--(ND of Ill-Eastern Div.)
Nov. 11-76	VERNON H. BOYLES -v- LAWRENCE R. DOLBE--Filed notice to take deposition of Teachers Ins. by William H. Goebel--(ND of Ill-Eastern Div.)
Nov. 15-76	IN RE: ESSEX PROPERTIES, INC.--Filed affdvt. & show cause order re: compliance of Citibank, N.A. re: subpoena-ret. 11-16-76-Rm. 506-Cooper, J.
Nov. 15-76	IN RE: ESSEX PROPERTIES, INC.--Filed memorandum of law in support of motion
Nov. 15-76	WILLIAM MC DONALD -v- ALITALIA AIRLINES--Filed notice to take deposition of Fiorella Funagalli--(Dist. of R.J.)
Nov. 15-76	PHILLIPS-FOSCOE CORP. -v- LEWIS & FARR, INC.--Filed notice to take deposition of Cary Koplin--(Dist. of Columbia)
Nov. 15-76	COALENERGY KENTUCKY, INC. -v- H.H. CALHOUN, JR.--Filed notice to take deposition of Murray J. Chikofsky--(ED of Ky. at London)
Nov. 15-76	ERNEST W. HAHN, INC. -v- HUGH B. COLMIG & CODDING ENTERPRISES--Filed notice to take deposition of Teachers Inc. & Annuity Assoc. of Amer. (ND of Calif.)
Nov. 15-76	MANDELL & CORSINI, INC. -v- TISHMAN CONST. CO. OF PA--Filed affdvt. & order extending time to serve show cause order and adjourning show cause order to 11-24-76-Cooper, J.
Nov. 15-76	USA -v- BIG LIFT SHIPPING CO.--Filed notice of examin. before trial of Edmund Camuty--(Dist. of N.J.)
Nov. 15-76	FEDERAL INS. CO. -v- BAHAR MARINE CO. LTD. OF LASSAN--Filed notice to take deposition of Van Washington Watler--(ED of La.)
Nov. 15-76	FEDERAL INS. CO. -v- BAHAR MARINE CO., LTD.--Filed notice to take deposition of Delroy Campbell--(ED of La.)
Nov. 16-76	HAROLD O. LOVE -v- TRANSAMERICAN PROPERTIES, INC.--Filed notice to take deposition of Chase Manhattan Bank by Russell Baker--(ED of Mich. Southern Div.)
Nov. 16-76	CANDELA CO. -v- ILLUMINATION INDUS., INC.--Filed notice to take deposition of Buck Buchanan, et al--(NO. D. of Calif.)
Nov. 16-76	MILTON P. KREMER -v- GREENWICH SAVINGS BANK--Filed notice to take deposition of Ruth Plattner Harkness, et ano--(ND of Pa.)
Nov. 16-76	DAVID C. MEYERS -v- SHEARN MOODY, JR.--Filed notice to take deposition of Norman Michigan--(ND of Texas-Dallas Div.)
Nov. 17-76	GREAT PLAINS BAY CORP. -v- ST. REGIS PAPER CO.--Filed transcript of proceedings of 8-30-76--Werker, J.
Nov. 17-76	MANDELL & CORSINI, INC. -v- TISHMAN CONST. CO. OF PA.--Filed affdvt. of service of show cause order

DATE	PROCEEDINGS
Nov. 17-76	HANDELL & CORBIN, INC. -v- TISHMAN CONST. CO. of Pa.--Filed affdvt. of Jeffrey B. Silverstein re: order extending time.
Nov. 17-76	HOWARD S. DUBOIN -v- NAT'L FIBERSTOCK CORP.--Filed notice to take deposition of Robert Newton-(ED of Pa.)
Nov. 17-76	NATIONAL HOSPITALITY MANAGEMENT CORP. -v- WAYNE RITTER--Filed notice to take deposition of Michael Ray-(D of No. Car. Asheville Div.)
Nov. 17-76	IN RE: ESSER PROPERTIES INC. -v- ESSER PROPERTIES, INC.--Filed memo endorsed on show cause order filed 11-15-76-Disposed of as indicated on argument-So ordered-Pollack, J.
Nov. 18-76	STUDIENGESSELLSCHAFT ROHLS -v- EASTMAN KODAK CO.--Filed notice to take deposition of Erik Tornquist--(ED of Texas-Beaumont Div.)
Nov. 18-76	ROYAL INDUS., INC. -v- ROYAL INDUS., INC.--Filed notice to take depositions of Dan Wolfus--(C.Dist. of Calif.)
Nov. 18-76	CPS CONTINENTAL, INC. -v- JOHN A. CANNELLA, JR.--Filed notice to take deposition of Touche Ross & Co. by an officer-(ED of N.Y.)
Nov. 18-76	SHARON STEEL CORP. -v- FOREMOST-MCKESSON, INC.--Filed notice to take deposition of Richard Cheney-(ND of Calif.)
Nov. 18-76	FOREMOST-MCKESSON, INC. -v- VICTOR POSNER, et al--Filed order authorizing filing of notice of taking depositions under seal-Cannella, J.
Nov. 18-76	FOREMOST-MCKESSON, INC. -v- VICTOR POSNER, et al--Filed stipulation between parties that all notices of depositions of individuals or companies in the following manner-the Clerk of USDC of ND of Calif. will issue certified copies of any such deposition notice prior to filing said notice into the court record under seal-(ND of Calif.)
Nov. 19-76	IONMAR COMPANIA NAVIERA, S.A. -v- CENTRAL OF GEORGIA RR CO.--Filed notice to take deposition of Charles I. Gibson-(SD of Ga.Savannah Div.)
Nov. 19-76	ELAINE BENVENUTO -v- JOHN A. BENVENUTO, JR.--Filed notice to take deposition Robert Davis, et ano-(Superior Ct. of Dist. of Columbia)
Nov. 19-76	IN RE: ORIENTAL WARRIOR CASES--Filed notice to take depositions of Peter S. Barracca, et al-(Middle Dist. of Fla.-Jacksonville Div.)
Nov. 19-76	G.R.I. CORP. -v- GOLDEN FIFTY PHARMACEUTICAL CO.--Filed notice to take deposition McKnight-Kirksey, Inc.--Filed notice-(ND of Ill-E.Div.)
Nov. 19-76	G.R.I. CORP. -v- GOLDEN FIFTY PHARMACEUTICAL CO.--Filed notice to take deposition of Diane Von Furstenberg Importing Co.Inc.-(ND of Ill-E. Div.)
Nov. 22-76	LOUIS GULOTTA & CO., INC. -v- ATLANTIC CONSTRUCTION CO., INC.--Filed notice to take deposition of James H. Curtin-(Dist. of Md.)
Nov. 22-76	LOUIS GULOTTA & CO., INC. -v- ATLANTIC CONSTRUCTION CO.--Filed notice to take deposition of Nicholas F. Papanicolaou-(D. of Md.)
Nov. 22-76	LOUIS GULOTTA & CO., INC. -v- ATLANTIC CONSTRUCTION CO.--Filed notice to take deposition of S. Richard Purselove-(D. of Md.)
Nov. 22-76	SOL NEIL CORBIN -v- FEDERAL DEPOSIT INST CORP.--Filed notice to take deposition of John A. Golden-(ED of NY)
Nov. 22-76	DUNA CHEMICAL CO. -v- SYBRON CORP.--Filed notice to take depositions of Andrew Henry Franzo Rochem Ltd., et al-(ND of Calif.)
Nov. 23-76	USA -v- MANUFACTURERS & TRADERS BANK-Filed Opinion #45,386-Government petition to compel Manufacturers & Traders Bank & James A. Kypritis to obey the IRS summons is granted-Metzner, J.
Nov. 23-76	CHARLES O. FINLEY & CO. -v- BOWIE K. KUHN--Filed notice to take deposition of Ford C. Frick-(ND of Ill-E.Div.)
Nov. 23-76	MARVIN COYNE -v- ISL INDUSTRIES, INC.--Filed notice to take deposition of Allegheny Corp.-(ND of Ill-E. Div.)
Nov. 18-76	FOREMOST-MCKESSON, INC. -v- VICTOR POSNER, et al--Filed one brown envelope containing notice of taking deposition & placed in vault pursuant to order of Cannella, J.-filed 11-18-76-

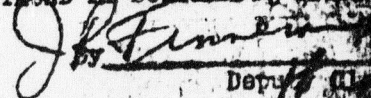
D. C. 100 Criminal Continuation Sheet

8 Clark of the Court

DATE	PROCEEDINGS
Nov. 24-76	RICHARD B. DANENBERG -v- HARDING L. LAWRENCE, et al--Filed notice to take deposition of Chase Manhattan Bank--(ND of Texas-Dallas Div.)
Nov. 24-76	RICHARD B. DANENBERG -v- HARDING L. LAWRENCE, et al--Filed notice to take deposition of C. Edward Acker--(ND of Texas-Dallas Div.)
Nov. 24-76	USA -v- MANUFACTURERS & TRADERS BANK--Filed memo endorsed on show cause order filed 10-15-76--Motion is denied--to order--Nettner, J.
Nov. 26-76	ROYAL INDUSTRIES, INC. -v- MONSIEUR INDUSTRIES, INC.--Filed notice to take deposition of NY Stock Exchange--(Central D. of Ga. N.Y.)
Nov. 26-76	LANDELL & CORSTI, INC. -v- TITHEAL CORSTI, CO. et al--Filed memo endorsed on show cause order filed 11-4-76--Withdrawn, see Winston-Cannella, J.
Nov. 26-76	ALLIANCE LASHING CO. -v- CHRIS GRANT IND., INC.--Filed notice to take deposition John Snyder--(SD of Fla-Miami Div.)
Nov. 26-76	EVELYN LOSS -v- NICHOLS OF MIAMI, INC.--Filed notice to take deposition of Dr. James H. Church--(ND of Tennessee-Co. Div.)
Nov. 26-76	USA -v- MANUFACTURERS & TRADERS BANK--Filed notice of appeal of proposed internener Allan H. Applestein from order denying application mailed copy to U.S. Atty.

A TRUE COPY

RAYMOND E. BURCHARDT, Clerk


 Deputy Clerk

8 Clerk of the Court

ORDER TO SHOW CAUSE
(Dated October 5, 1976 (pp. 3a-4a))

3a

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
UNITED STATES OF AMERICA and
ROBERT RAGONE, Special Agent,
Internal Revenue Service,

ORDER TO SHOW CAUSE

Petitioners,

-v-

MANUFACTURERS & TRADERS BANK
(formerly FIRST EMPIRE BANK-
NEW YORK) and JAMES A. KYPRIOS,
Vice President, International
Banking, Manufacturers &
Traders Bank,

Respondents.

M 8-85

-----X
Upon the petition, the exhibit attached thereto,
the affidavits of Special Agent Robert Ragone and Special
Agent Robert Grant, Internal Revenue Service, and upon the
motion of Robert B. Fiske, Jr., United States Attorney for
the Southern District of New York, it is

ORDERED that the Manufacturers & Traders Bank
(formerly First Empire Bank-New York) and James A. Kyprios,
Vice President, International Banking, Manufacturers &
Traders Bank, appear before ^{Judge Mitzen} ~~the undersigned judge~~ of the
United States District Court for the Southern District of
New York, in Room 35, United States Courthouse,
Foley Square, New York, New York, on the 13th day of
October, 1976, at 4:30 o'clock in
the after noon, or as soon thereafter as counsel can be
heard to show cause why they should not be compelled to obey
the Internal Revenue Service summons served upon them on

February 10, 1976; and it is further

ORDERED that service of a copy of this Order, together with the petition, exhibit and affidavits thereto upon the Manufacturers & Traders Bank (formerly First Empire Bank-New York) and James A. Kyprios, Vice-President, International Banking, Manufacturers & Traders Bank, on or before 5 o'clock p.m., 6 October, 1976, shall be deemed good and sufficient service hereof; and it is further

ORDERED that the Manufacturers & Traders Bank (formerly First Empire Bank-New York) and James A. Kyprios, Vice-President, International Banking, Manufacturers & Traders Bank, shall file a written response to the petition within 3 days after service of the petition upon them.

Dated: New York, New York

October 5, 1976.

/s/ Kevin Thomas Duffy
UNITED STATES DISTRICT JUDGE

PETITION TO ENFORCE INTERNAL REVENUE SERVICE SUMMONS
(Dated October 4, 1976) (pp. 5a-12a)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA and
ROBERT RAGONE, Special Agent,
Internal Revenue Service,

Petitioners,

PETITION TO ENFORCE
INTERNAL REVENUE
SERVICE SUMMONS

76 Civ.

-v-

MANUFACTURERS & TRADERS BANK
(formerly FIRST EMPIRE BANK-
NEW YORK) and JAMES A. KYPRIOS,
Vice President, International
Banking, Manufacturers & Traders
Bank,

Respondents.

The United States of America and Special Agent
Robert Ragone, Internal Revenue Service, by their attorney,
Robert B. Fiske, Jr., United States Attorney for the
Southern District of New York, for their petition, state
upon information and belief:

1. This is a proceeding brought under the
authority of Sections 7402(b) and 7604(a) of the Internal
Revenue Code of 1954, 26 U.S.C. §§ 7402(b) and 7604(a),

to enforce judicially an Internal Revenue Service summons.

2. The petitioner, Robert Ragone, is a special agent of the Internal Revenue Service employed in New York, New York, and is authorized to issue Internal Revenue Service summonses under the authority of Section 7602 of the Internal Revenue Code of 1954, 26 U.S.C. § 7602, and Treasury Regulation §301.7602-1, 26 C.F.R. §301.7602-1.

3. The respondent, Manufacturers & Traders Bank (formerly First Empire Bank-New York), is a New York corporation engaged in the banking business, with offices at 654 Madison Avenue, New York, New York, within the jurisdiction of this Court. The respondent, James A. Kyrios, is Vice President, International Banking, of the Manufacturers & Traders Bank (formerly First Empire Bank-New York), also with offices at 654 Madison Avenue, New York, New York, within the jurisdiction of this Court.

4. The petitioner, Special Agent Robert Ragone, is assisting in a joint civil-criminal investigation being conducted into the federal income tax liabilities of Allan H. Applestein, 130 Casuarina Concourse, Coral Gables,

Florida, and of entities in which he has an interest, for the calendar years 1971, 1972, 1973 and 1974. This investigation is more fully described in the affidavit of Special Agent Robert Grant, Internal Revenue Service, attached hereto and incorporated herein as part of this application.

5. The taxpayer, Allan H. Applestein, and legal entities in which he has an interest have conducted financial transactions with the respondent, Manufacturers & Traders Bank (formerly First Empire Bank-New York). The respondent, Manufacturers & Traders Bank, has books, records and papers relating to these transactions and has employees and officers with knowledge of these books, records and papers, all of which relate to the tax liabilities under investigation by the Internal Revenue Service, as described in paragraph 4, above.

6. On February 10, 1976, a summons was issued by the petitioner, Special Agent Robert Ragone, directing the respondents, Manufacturers & Traders Bank and James A. Kypric Vice President, International Banking, Manufacturers & Trader

Bank, to appear before the petitioner, Special Agent, Robert Ragone, on February 25, 1976, at 10:00 a.m., to testify and to produce for examination certain books, records and papers, all as set forth in the attached affidavit and summons. An attested copy of the summons was personally served upon the respondents, Manufacturers & Traders Bank and James A. Kyprios, Vice President, International Banking, Manufacturers & Traders Bank, by the petitioner, Special Agent Robert Ragone, on February 10, 1976, by handing it to the respondent, James A. Kyprios, Vice President, International Banking. The summons issued to the respondents, Manufacturers & Traders Bank and James A. Kyprios, Vice President, International Banking, Manufacturers & Traders Bank, is attached to the affidavit of Robert Ragone as Exhibit 1 thereto and incorporated herein by reference.

7. Pursuant to requests made by and discussions had with respondents and their counsel, the petitioner, Special Agent Robert Ragone, consented to a series of extensions of time for the respondents to comply with the summons, the last of which extensions expired on March 29,

1976. On that date, the petitioner, Special Agent Robert Ragone, was contacted by counsel for the respondents and informed that respondents would not comply with the Internal Revenue Service Summons because of a restraining order issued against respondents in an action entitled Allan H. Applestein v. M & T Bank, a/k/a, Manufacturers & Traders Bank, 76 Civ. 1443 (CMM) (S.D.N.Y.), assigned to the Hon. Charles M. Metzner.

8. In response to the summons issued to them and described in paragraph 6 hereof, respondents failed to appear on March 29, 1976, or on any date thereafter.

9. The testimony and records sought by the summons issued to the respondents, Manufacturers & Traders Bank and James A. Kyprios, Vice-President, International Banking, are not already in the possession of the Internal Revenue Service, with the possible exception of Forms 1099 (Item 3 of the summons) which may have been filed by the respondents with the Internal Revenue Service.

10. The testimony and documents sought may be relevant to the determination of the federal tax liabilities of the taxpayer, Allan H. Applestein, and of entities in which he has an interest, for the years 1971, 1972, 1973

and 1974, and it is therefore important that the respondents, Manufacturers & Traders Bank and James A. Kyprios, Vice-President, International Banking, Manufacturers & Traders Bank, be required to testify and to produce the records demanded.

11. No recommendation has been made by the District Director or by Special Agent Grant concerning criminal prosecution vel non of Allan H. Applestein and the companies and entities in which he has an interest.

WHEREFORE, the petitioners respectfully pray:

1. That this Court enter an order directing the respondents, Manufacturers & Traders Bank (formerly First Empire Bank-New York) and James A. Kyprios, Vice President, International Banking, Manufacturers & Traders Bank, to show cause, if any they have, why they should not comply with and obey the aforementioned summons and each and every requirement thereof.

2. That the Court enter an order directing the respondents, Manufacturers & Traders Bank (formerly First Empire Bank-New York) and James A. Kyprios, Vice President, International Banking, Manufacturers & Traders Bank, to

obey the aforementioned summons and each and every requirement thereof, and ordering their attendance and testimony and the production of the books, records and papers as required and called for by the terms of the summons, before Special Agent Robert Ragone, or any proper officer of the Internal Revenue Service, at such time and place as may hereafter be fixed by Special Agent Robert Ragone, or any proper officer of the Internal Revenue Service.

3. That the United States recover its costs in maintaining this action.

4. That the Court render such other and further relief as is just and proper.

Dated: New York, New York
October 4, 1976.

ROBERT B. FISKE, JR.
United States Attorney for the
Southern District of New York
Attorney for Petitioners

By:

Kent T. Stauffer
KENT T. STAUFFER
Assistant United States Attorney
One St. Andrews Plaza, N.Y. 10007
Tel.: (212) 791-9076

VERIFICATION

STATE OF NEW YORK)
 COUNTY OF NEW YORK : ss.:
 SOUTHERN DISTRICT OF NEW YORK)

KENT T. STAUFFER, being duly sworn, deposes and says that he is an Assistant United States Attorney for the Southern District of New York, and as such has charge of the above entitled action; that he has read the foregoing Petition to Enforce Internal Revenue Service Summons and knows the contents thereof, and that the same is true of his own knowledge, except as to those matters herein stated to be alleged on information and belief and that as to those matters he believes it to be true.

That the sources of deponent's information and the grounds of his belief are official records and files of the United States, and conversations with government officials.

That the reason this verification is made by deponent and not by the United States of America is that the United States of America is a corporation sovereign.

Sworn to before me this

4th day of October, 1976.

Ralph I. Lee

RALPH I. LEE
 Notary Public, State of New York
 No. 41-2292835 Queens County
 Term Expires March 30, 1977

Kent T. Stauffer
 KENT T. STAUFFER
 Assistant United States Attorney

AFFIDAVIT OF ROBERT RAGONE IN SUPPORT OF THE PETITION
 (Sworn to October 4, 1976) (pp. 13a-17a)

UNITED STATES DISTRICT COURT
 SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA and
 ROBERT RAGONE, Special Agent,
 Internal Revenue Service,

AFFIDAVIT OF
ROBERT RAGONE

Petitioners,

76 Civ.

-v-

MANUFACTURERS & TRADERS BANK
 (formerly FIRST EMPIRE BANK-
 NEW YORK) and JAMES A. KYRIOS,
 Vice President, International
 Banking, Manufacturers & Traders
 Bank,

Respondents.

STATE OF NEW YORK
 COUNTY OF NEW YORK
 CITY OF NEW YORK

)
 : ss.:
)

ROBERT RAGONE, a petitioner herein, being duly
 sworn, deposes and says:

1. I am a duly commissioned Special Agent of
 the Intelligence Division of the Internal Revenue Service
 with post of duty in New York, New York under the District
 Director of Internal Revenue, Manhattan District. I make

this affidavit in support of the petition to enforce an Internal Revenue Service summons, and I base this affidavit on my personal knowledge and on the files and records of the Internal Revenue Service.

2. In my capacity as a Special Agent I was assigned to assist in a joint investigation of the federal tax liabilities of Allan H. Applestein, 130 Casuarina Concourse, Coral Gables, Florida, for the calendar years 1971, 1972, 1973 and 1974. This joint investigation is being conducted by agents in the Miami, Florida, office of the Internal Revenue Service and is more fully described in the affidavit of Robert Grant, submitted in support of the petition.

3. On the basis of information supplied to me by Special Agent Robert Grant, who is participating in a joint investigation of Allan H. Applestein and legal entities in which he has an interest, I have reason to believe that Applestein and the entities in which he has an interest have engaged in financial transactions with the Manufacturers & Traders Bank (formerly First Empire Bank - New York),

654 Madison Avenue, New York, New York. On information and belief, the books, records and papers pertaining to these transactions and the testimony of officers and employees concerning these transactions may be relevant to the investigation of the federal tax liabilities of Allan H. Applestein for the years 1971 through 1974.

4. Pursuant to such investigation and in accordance with Sections 7602 and 7603 of the Internal Revenue Code of 1954, 26 U.S.C. §§7602 and 7603, a summons, Treasury Form 2039, was served upon the Manufacturers & Traders Bank (formerly First Empire Bank-New York) and James A. Kyprios, Vice President, International Banking, of Manufacturers & Traders Bank, on February 10, 1976, by my personally handing an attested copy to the respondent, James A. Kyprios, Vice President of the Manufactureres & Traders Bank. That summons, which is attached as Exhibit 1 to this affidavit and made a part hereof, directed the Manufacturers & Traders Bank (formerly First Empire Bank-New York), to appear before me on February 25, 1976, at 10:00 a.m., at the Internal Revenue Service Intelligence

Division, 120 Church Street, New York, New York, then and there to give testimony and to produce books, records and papers relating to the federal tax liabilities of Allan H. Applestein for the years 1971, 1972, 1973 and 1974.


5. Thereafter, I received a series of requests for extensions of time for the respondents to comply with the summons. These requests were received from officers of the Manufacturers & Traders Bank and from its counsel. I agreed to three such extensions, finally setting respondents' time for compliance at 10:00 a.m. on March 29, 1976. On that date, I was informed by counsel for Manufacturers & Traders Bank that the bank was unable to comply with the summons because of a restraining order entered in an action entitled Allan H. Applestein v. M & T Bank, a/k/a, Manufacturers & Traders Bank, 76 Civ. 1443 (GMM) (S.D.N.Y.).

6. The respondents failed to appear before me as directed by the summons issued to them, and such failure has continued to the date of this affidavit.

7. Upon information and belief, the testimony and books, records and papers sought by the summons issued

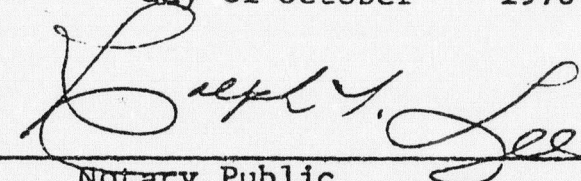
to the Manufacturers & Traders Bank and James A. Kyprios, Vice President, International Banking, are not already in the possession of the Internal Revenue Service (with the possible exception of Forms 1099) and no recommendation for prosecution of this taxpayer has been made by the IRS District Director, either to the United States Department of Justice or otherwise.

8. No previous application for the relief sought herein has been made.


ROBERT RAGONE, Special Agent
Intelligence Division
Internal Revenue Service

Sworn to before me this

4th day of October 1976.


Notary Public

RALPH L. LEE
Notary Public, State of New York
No. 41-2292838 Queens County
Term Expires March 30, 1977

Form 203a
Rev. 2-74

Summons



Department of the Treasury
Internal Revenue Service

In the matter of the tax liability of
Allan H. Applestein
Coral Gables, Florida

Internal Revenue District of Manhattan

Period(s) 1971 through 1974, inclusive

The Commissioner of Internal Revenue

To Manufacturers & Traders
Formerly: First Empire Bank-New York
At 654 Madison Avenue
New York, New York

Greetings: You are hereby summoned and required to appear before

Special Agent Robert Ragone
an officer of the Internal Revenue Service, to give

testimony relating to the tax liability or the collection of the tax liability of the above named person for the period(s) designated and to bring with you and produce for examination the following books, records, and papers at the place and time hereinafter set forth:

1. Documents concerning any and all transactions between First Empire Bank-New York and the following:

- a) Allan H. Applestein
- b) Little Judy Industries
- c) Master Capital Corporation
- d) Diatomite Corporation Of America
- e) Coffeeville Packing Company, Inc.
- f) W & H Management International, Ltd.
- g) Freezer Warehouses

- 2) All documents indicating certificates of deposit to any of the above entities.
- 3) All 1099's or documents showing a record of interest payments made or discounts received by the above entities.
- 4) Documents concerning any account that the above named individual has an interest in, control of, or signatory withdrawals rights over.

Place and time for appearance: Internal Revenue Service, Intelligence Division - 20th Floor
at 120 Church Street, New York, New York Receptionist

on the 25th day of February, 19 76 at 10:00 o'clock A. M.

Failure to comply with this summons will render you liable to proceedings in the district court of the United States or before a United States commissioner or magistrate to enforce obedience to the requirements of this summons, and to punish default or disobedience.

Issued under authority of the Internal Revenue Code

this 10th day of February, 19 76

Original

Robert Ragone
Signature Robert Ragone

264-3786

Special Agent

Title Asst. Dir. Inv. Form 203a (Rev. 2-74)

1976

Certificate of Service of Summons

(Pursuant to Section 7603, Internal Revenue Code)



I certify that I served the summons shown on the front of this form on:

Date	Time
February 10, 1976	2:08 PM

How
Summons
Was
Served

☒ I handed an attested copy of the summons to the person to whom it was directed,

Tamara Hylcias - Juv Probant dnl B. King
832 - 8300

☐ I left an attested copy of the summons with the following person at the last and usual place of abode of the person to whom it was directed

Signature

Robert Payne

Title

Special Agent

Sec. 7603

Service of Summons

A summons issued under section 6420(e)(2), 6421(f)(2), 6424(d)(2), 6427(e)(2), or 7602 shall be served by the Secretary or his delegate, by an attested copy delivered in hand to the person to whom it is directed, or left at his last and usual place of abode; and the certificate of service signed by the person serving the summons shall be evidence of the facts it states on the hearing of an application for the enforcement of the summons. When the summons requires the production of books, papers, records, or other data, it shall be sufficient if such books, papers, records, or other data are described with reasonable certainty.

BEST COPY AVAILABLE

Form 2039 (Rev. 2-74)

AFFIDAVIT OF ROBERT C. GRANT (Sworn to September 24, 1976)
(pp. 20a-24a)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA and
ROBERT RAGONE, Special Agent,
Internal Revenue Service,

Petitioners,

-v-

MANUFACTURERS & TRADERS BANK
(formerly FIRST EMPIRE BANK-
NEW YORK) and JAMES A. KYPRIOS,
Vice President, International
Banking, Manufacturers & Traders
Bank,

Respondents.

AFFIDAVIT OF
ROBERT C. GRANT

76 Civ.

STATE OF FLORIDA)
COUNTY OF DADE :ss.:
CITY OF MIAMI)

ROBERT C. GRANT, being duly sworn, deposes and
says:

1. I am a duly commissioned special agent of the
Intelligence Division of the Internal Revenue Service with
post of duty in Miami, Florida, and performing my duties
under the District Director of Internal Revenue, Jacksonville,
Florida.

2. I am presently conducting a joint investigation

into the federal tax liabilities of Allan H. Applestein and various companies and entities with which he is affiliated. In this investigation, I have succeeded to the duties and responsibilities of Special Agent Richard Jaffe of this office, and I make this affidavit based on personal knowledge and on the files and records of the investigation now in my custody.

3. The Internal Revenue Service branch office at Miami, Florida, has been conducting its joint investigation of Allan H. Applestein and various legal entities in which he has an interest since May, 1975. The investigation originally focused on federal income tax liabilities for the years 1971, 1972, and 1973, and it was subsequently expanded to include the year 1974 with respect to the Allan H. Applestein Foundation Trust.

4. The joint investigation was initially handled by Revenue Agent Milton Billig of the Audit Division and Special Agent Richard E. Jaffe of the Intelligence Division, Miami, Florida.

5. At the time he entered this investigation, Special Agent Jaffe notified the taxpayer of the existence of an investigation to determine if any criminal violations

of the tax laws have been committed. Such notices are routinely sent by this office when Special Agent enters an investigation, whether or not pursuant to a joint investigation. Copies of letters to Allan H. Applestein from Special Agent Jaffe, dated June 3, 1975, and June 9, 1975, are attached hereto and incorporated herein respectively as Exhibits "A" and "B".

6. The files and records of the investigation indicate that Allan H. Applestein and companies and entities in which he has an interest or with which he is affiliated have conducted financial transactions with the respondent, Manufacturers & Traders Bank (formerly First Empire Bank - New York). Based on this information, the Internal Revenue Service has reason to believe that Manufacturers & Trade.. Bank has books, records, and papers relating to these transactions and that the Bank has employees and officers with knowledge of these books, records and papers.

7. By letter dated January 9, 1976, Special Agent Jaffe requested the District Director of the Internal Revenue Service at New York to cause a summons to be issued directing the Manufacturers & Traders Bank to produce records and testimony of officers and employees relative to the investigation of Applestein. We were later notified that the summons had been issued but not complied with.

8. The Internal Revenue Service seeks to have this summons enforced because the documents and testimony sought may be relevant to a determination of the federal tax liability of Applestein and the companies and entities in which he has an interest.

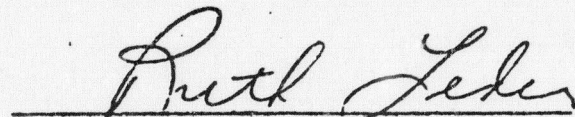
9. With respect to the audit portion of the investigation, the District Director, in memorandums dated November 25, 1975 and August 25, 1976, requested the Audit Division to take no civil assessment action or enforcement action in the cases subject to the joint investigation until the Intelligence Division has completed its investigation and made a recommendation concerning prosecution. As a consequence, I am now the primary responsible agent, with the cooperation of assigned Revenue Agents of the Audit Division, for the joint investigation. Upon completion of my aspects of the investigation, a determination of whether or not criminal prosecution should be recommended will be made. As yet, however, I have made no recommendation whether or not to institute criminal proceedings to the District Director of the Internal Revenue Service and no such recommendation has been made to the Department of Justice.

10. I do not expect to be able to make a final recommendation concerning criminal prosecution, one way or the other, for many months, pending receipt of information pursuant to a number of requests for information which are still outstanding. If no criminal prosecution is recommended, the Audit Division will continue its active investigation using, among other things, the information developed by me and other agents in the Intelligence Division. In any event, the information developed by the Intelligence Division will be used by the Audit Division for their use in examinations to determine the correct tax liability of the taxpayer and entities involved. My present investigation is of particular use to the Audit Division in the determination and computation of civil fraud penalties which may be assessed against the taxpayers under the Internal Revenue Code.

Sworn to before me this
 24th day of September, 1976.



ROBERT C. GRANT, Special Agent
 Intelligence Division
 Internal Revenue Service


 Notary Public

NOTARY PUBLIC STATE OF FLORIDA AT LARGE
 MY COMMISSION EXPIRES MAY 24 1980
 BONDED THRU GENERAL INS. UNDERWRITER

ORDER TO SHOW CAUSE WITH STAYS
(Dated October 15, 1976) (pp.25a-26a)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA and ROBERT
RAGONE, Special Agent, Internal Revenue
Service,

Civ. No.

M8-85

Petitioners,

-v-

MANUFACTURERS & TRADERS BANK (formerly
FIRST EMPIRE BANK - NEW YORK) and JAMES A.
KYPRIOS, Vice President, International
Banking, Manufacturers & Traders Bank,

Respondents.

ORDER TO SHOW CAUSE

with stays

Upon reading and filing the annexed Affidavit of
KENNETH N. MILLER, ESQ., sworn to on October 14, 1976; the Answer
of proposed Intervenor, ALLAN H. APPLESTEIN; and sufficient
reason appearing therefor, *it is hereby*
ordered
~~that~~ *LET*, Petitioners and Respondents herein show cause before
this Court, in Room 35 of the ~~Federal~~ ^{U.S.} Courthouse, Foley Square,
New York, on October 20, 1976, at ~~4:00~~ ^{4:30} o'clock in the afternoon
of that day, or as soon thereafter as counsel can be heard, why
an Order should not be made and entered herein: (1), Granting
Allan H. Applestein's (Applestein) application to intervene in
this proceeding; (2), Permanently enjoining the Commissioner of
Internal Revenue, his agents, servants and/or employees from

enforcing a summons heretofore served by him on Respondent, MANUFACTURERS & TRADERS BANK (Bank), which summons seeks production of Applestein's personal records as well as the records of corporations with which Applestein is affiliated; and, (3), Permanently enjoining Respondent Bank from complying with the terms of the aforementioned summons served upon it by the Office of the Commissioner of Internal Revenue; and it is further

ORDERED, that pending the hearing and determination of Applestein's application, Respondent, Commissioner of Internal Revenue, his agents, servants and/or employees, is enjoined, stayed and restrained from enforcing the aforementioned summons served by him on Respondent Bank; and it is further

ORDERED, that pending the hearing and determination of Applestein's application, Respondent Bank, its agents, servants and/or employees be and they are hereby enjoined, stayed and restrained from complying with the aforementioned summons served upon Respondent Bank by the Office of Respondent Commissioner of Internal Revenue; and it is further

ORDERED, that service of a copy of this order, together with the papers upon which it was granted, personally upon the parties hereto, ^{at the attorneys} on or before ^{5:30} 5:00 o'clock P.M. on the 15th day of October, 1976, be deemed good and sufficient service.

Dated New York, N.Y.
Oct. 15, 1976.

Charles M. Martinez
U.S.D.C. Judge

AFFIDAVIT OF KENNETH N. MILLER

27a

(Sworn to October 15, 1976) (pp. 27a-34a)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
UNITED STATES OF AMERICA and ROBERT
RAGONE, Special Agent, Internal Revenue
Service,

Civ. No.
M8-85

Petitioners,

-v-

MANUFACTURERS & TRADERS BANK (formerly
FIRST EMPIRE BANK - NEW YORK) and JAMES
A. KYPRIOS, Vice President, International
Banking, Manufacturers & Traders Bank,

Respondents.
-----x

AFFIDAVIT

STATE OF NEW YORK :
 : SS:
COUNTY OF NEW YORK:

KENNETH N. MILLER, being duly sworn, deposes and says:

1. I am associated with BALLON, STOLL & ITZLER, attorneys
for ALLAN H. APPLESTEIN (Applestein), who seeks to intervene in
this action. I am fully familiar with all facts and circumstances
hereinafter set forth and submit this Affidavit because the
proposed intervenor, Applestein, is a resident of the State of
Florida and, given the immediacy of the application being sub-
mitted, it is not possible to obtain an executed Affidavit from
Applestein. I submit this Affidavit in support of Applestein's
application, for an Order: (a) Pursuant to Rule 24 of the Rules of
Civil Procedure, permitting him to intervene in this action; (b)

Permanently restraining petitioner herein, the Commissioner of Internal Revenue (Commissioner) from enforcing compliance with a Summons issued by him to respondent, Manufacturers & Traders Bank (Bank), requiring the production of Applestein's personal records as well as the records of corporations with which Applestein is affiliated; and, (c) Permanently enjoining respondent Bank from complying with the terms of the aforementioned Summons (Exhibit "A").

2. The basis for the within Application, more fully set forth in the Intervenor's Answer, (Exhibit "B"), is that the Internal Revenue Service Summons (IRS Summons) has been issued in bad faith and has been used for an improper purpose. Specifically, the Summons was issued to obtain evidence solely for use in criminal proceedings against Applestein.

3. The IRS Summons was served upon the Bank on or about February 25, 1976. Shortly thereafter, the Bank notified Applestein of receipt of the Summons.

4. Applestein, a resident of Miami, Florida, contacted CUNNINGHAM & WEINSTEIN, ESQS., Miami, Florida. Philip Weinstein (Weinstein) of Cunningham & Weinstein, Esqs. communicated with Special Agent, Robert Ragone. Weinstein was advised that the IRS Summons had been issued at the request of IRS Special Agents conducting a criminal investigation in Miami, Florida. Weinstein

was unequivocally told that the investigation was "strictly criminal".

5. On June 3, 1975 and on June 9, 1975, Notices were sent to Applestein by one Richard E. Jaffee, a Special Agent, Intelligence Division in Florida, advising Applestein that an investigation was under way to determine whether criminal violations of the tax laws had been committed by Applestein or by the Allan H. Applestein Foundation Trust (Trust). Copies of these Notices are annexed hereto as Exhibits "C" and "D".

6. Neither document makes any reference to an examination for the purpose of ascertaining the Civil Tax Liability of Applestein or anyone else. In point of fact, prior to and in or about September 1974 the Internal Revenue Service (IRS) conducted and closed a civil audit of Applestein's tax returns for the years 1971, 1972 and 1973. During the audit, Applestein was told that no criminal or fraud investigation was being conducted in conjunction therewith.

7. On the basis of this information, and in view of the numerous decisions interpreting Section 7602 of the Internal Revenue Code, holding that the power to issue summonses for the examination of books, papers and records may not be exercised in bad faith or for an improper purpose, Weinstein contacted representatives of the Bank. Specifically, Andrew Quale, Esq.

(Quale) of the firm of Coudert Bros., counsel to the Bank, was contacted and requested to restrain their client from complying with the IRS Summons based upon Applestein's contention that the IRS Summons was issued in bad faith and was an improper exercise of authority by the Commissioner.

8. Quale indicated that it was not possible to make a determination at that point and that he would investigate the matter further. Applestein then retained Ballon, Stoll & Itzler, on Tuesday, March 23, 1976, who communicated with Quale to determine whether he would, as requested, refuse to comply with the IRS Summons. Applestein intended to intervene and object to the IRS Summons, in the enforcement proceedings, which would, as a matter of course, be commenced pursuant to Section 7604 of the Internal Revenue Code.

9. Quale advised Ballon, Stoll & Itzler, that he was still investigating and consulting with members of his firm; and it was not until 4:00 o'clock P.M. on Wednesday, March 24, 1976, that Quale advised Ballon, Stoll & Itzler that a determination had been made not to resist the IRS Summons, and that the Bank would turn over all of the records requested by the IRS Summons on the morning of March 26, 1976, the date to which the IRS Summons had been adjourned at the Bank's request. Thereafter, Ballon, Stoll & Itzler, by Order to Show Cause, sought an

application temporarily and preliminarily enjoining the Bank from complying with the IRS Summons. This application was heard before Honorable Charles M. Metzner on March 30, 1976, and after argument by Applestein's counsel to which there was no opposition, Applestein's application was granted.

10. The United States, through IRS Special Agents, Robert Ragone (Ragone) and Robert Grant (Grant) has now filed a petition against the Bank, pursuant to Sections 7402(b) and 7604(a) of the Internal Revenue Code of 1954, 26 USC Sections 7402(b) and 7604(a), to enforce the precise IRS Summons which was the subject of Applestein's prior application. The Commissioner seeks to characterize the Summons as being in furtherance of a joint civil-criminal investigation and therefore completely proper and issued in good faith. As heretofore stated, such characterization is completely falacious and without merit.

11. The Commissioner, in support of the claim that this is a joint civil-criminal investigation, states that, as of the present time, no recommendation has been made by the District Director or by Special Agent Grant concerning criminal prosecution of Applestein. This statement is not determinative in view of recent decisions which point out that whether a criminal prosecution has been instigated or recommended is not conclusory of whether a

Summons has been issued in good faith. The true nature of this "joint investigation" is readily discerned from the statement made by Special Agent Grant in Paragraph 9 of his Affidavit in Support of Petitioner's Application wherein he states "with respect to the audit portion of the investigation, the District Director, in memorandums dated November 25, 1975 and August 25, 1976, requested the Audit Division to take no civil assessment action or enforcement action in the case as subject to the joint investigation until the Intelligence Division has completed its investigation and made a recommendation concerning the prosecution".

12. Since the IRS completed a long and extensive civil audit of Applestein in September, 1974, any attempt by petitioners to disguise this purely criminal investigation, which was commenced a few months after the close of the civil audit, is patently absurd and an offense to the intelligence of this Court.

13. Quale has advised deponent that the Bank will not oppose the Petitioner's application to enforce the IRS Summons because the Bank's position is merely that of a stakeholder.

14. Applestein's interest in the documents and records which the IRS Summons encompasses is so apparent and important that disposition of the Petition without his intervention, as a party, will deny him the basic right to protect that interest. At the very least, Applestein, to adequately protect so precious a

right, is entitled to discovery proceedings to ascertain the modus operandi of the pending matter. Whether the IRS investigation is civil or criminal in nature is not susceptible of summary resolution upon affidavits. Applestein is at an extreme disadvantage unless he is accorded full and unfettered discovery to ascertain the true nature and purpose of the aforementioned summons. The testimony of the IRS Agents (Jaffee and Grant) particularly involved with the matters, is invaluable to a determination upon an open record. Applestein is entitled to at least this.

15. Applestein claims privilege under the United States Constitution, which privilege protects against the compulsory production of books and records in the manner presently sought by the Government.

16. If the Petition is granted, and the Summons enforced against respondent Bank, without permitting Applestein the opportunity to assert the constitutional privilege against an unreasonable search, and to argue the underlying facts giving rise to this privilege, Applestein's rights will have been trampled as though they were non-existent, for the issue of the propriety of the IRS Summons will be academic, as all documents will already have been delivered to the IRS.

17. The public policy of our country, in favor of allowing a taxpayer to intervene in an IRS summons enforcement

proceeding, is so great that it has been codified in the Tax Reform Law of 1976. The Act, effective January 1, 1977, grants a taxpayer, similarly situated as Applestein, an absolute right to intervene in a proceeding such as that pending before the Court. To deny Applestein's application would be an abuse of discretion and contrary to the public policy of our country as above indicated.

WHEREFORE, I respectfully request this Court to permit Applestein to intervene in this proceeding and for such other and further relief as this Court may deem just and proper.

Kenneth N. Miller
 Kenneth N. Miller

Sworn to before me this

15th day of October, 1976
 5/

SAMN MEISSEL
 NOTARY PUBLIC, State of New York
 No. 41-4609867
 Qualified in Queens County
 Commission Expires March 30, 1977

EXHIBITS ANNEXED TO FOREGOING AFFIDAVIT

EXHIBIT A - SUMMONS
SUMMONS

35a



Internal Revenue Service

Summons of the tax liability of
Allan H. Applestein
Coral Gables, Florida

Internal Revenue District of Manhattan

Period(s) 1971 through 1974, inclusive

Commissioner of Internal Revenue

Manufacturers & Traders
Formerly: First Empire Bank-New York

850 Madison Avenue
New York, New York

Notice: You are hereby summoned and required to appear before

Special Agent Robert Ragone

an officer of the Internal Revenue Service, to give

testimony relating to the tax liability or the collection of
the tax liability of the above named person for the peri-
od(s) designated and to bring with you and produce for
examination the following books, records, and papers at
the place and time hereinafter set forth:

Documents concerning any and all transactions between First Empire Bank-New York
and the following:

- a) Allan H. Applestein
- b) Little Judy Industries
- c) Master Capital Corporation
- d) Diatomite Corporation Of America
- e) Coffeerville Packing Company, Inc.
- f) W & H Management International, Ltd.
- g) Freezer Warehouses

All documents indicating certificates of deposit to any of the above entities.
All 1099's or documents showing a record of interest payments made or discounts
received by the above entities.

Documents concerning any account that the above named individual has an interest
in, control of, or signatory withdrawals rights over.

and time for appearance: Internal Revenue Service, Intelligence Division - 20th Floor
120 Church Street, New York, New York 264-3787-86 Receptionist

25th day of February, 19 76 at 10:00 o'clock 4 M.

to comply with this summons will render you liable to proceed-
the district court of the United States or before a United States

commissioner or magistrate to enforce obedience to the requirements
of this summons, and to punish default or disobedience.

under authority of the Internal Revenue Code

10th day of February, 19 76

Best Copy

Signature

Robert Ragone

Special Agent

Title

BEST COPY AVAILABLE

70702 (Rev. 2-74)

EXHIBIT B - INTERVENOR'S ANSWER

(pp. 36a-40a)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x

UNITED STATES OF AMERICA and
ROBERT RAGONE, Special Agent,
Internal Revenue Service,

Petitioners,

INTERVENOR'S
ANSWER

-against-

MANUFACTURERS & TRADERS BANK
(formerly FIRST EMPIRE BANK-
NEW YORK) and JAMES A. KYPRIOS,
Vice President, International
Banking, Manufacturers Traders
Bank,

Respondents.

-----x

Proposed Intervenor, ALLEN H. APPLESTEIN, by his
attorneys, BALLON, STOLL & ITZLER, responding to Petitioners'
Petition, insofar as practical, alleges as follows:

1. APPLESTEIN is a resident of the State of Florida.
2. ROBERT RAGONE ("Ragone") is a Special Agent of the
Internal Revenue Service ("IRS"), employed in New York City.
3. Upon information and belief, respondent, MANUFACTURERS
& TRADERS BANK ("Bank"), is a banking corporation with its prin-
cipal place of business located within the jurisdiction of this
Court.

4. This action arises under Acts of Congress providing for internal revenue and more specifically Sections 7602, 7603, 7604 and 7605, Title 16 U.S.C.

5. Jurisdiction of this court is based upon the provisions of Title 28 U.S.C. Section 1339.

6. Prior to September, 1974, agents of the IRS conducted a civil audit of APPLESTEIN'S tax returns for the years 1971, 1972 and 1973.

7. During the course of audit, APPLESTEIN was told by the Revenue Agent in charge of the audit that no criminal or fraud investigation was being conducted simultaneously with the civil audit.

8. The audit was completed and finally closed by the IRS in September, 1974.

9. Thereafter, and on or about June 3, 1975, RICHARD E. JAFFEE ("Jaffee"), a Special IRS Agent, by letter to APPLESTEIN (Exhibit "A") that he had been assigned to determine if any criminal violations of the tax laws had been committed with respect to APPLESTEIN'S filing of personal income tax returns for 1971 through 1973.

10. On or about June 9, 1975, Jaffee again wrote to APPLESTEIN (Exhibit "B") and advised that an investigation would

also be conducted to ascertain possible criminal law violations with respect to the operation of the Allan H. Applestein Foundation Trust ("Trust").

11. APPLESTEIN and various companies with which he is affiliated, maintain accounts with respondent Bank.

12. On or about February 10, 1976, the IRS served a summons upon Respondent (Exhibit "C"), requiring the production of certain of the Bank's records relating to APPLESTEIN and various companies with which APPLESTEIN is affiliated.

13. The summons seeks records for the years 1971 through 1974.

14. Upon learning of the summons from the Bank, APPLESTEIN'S Florida counsel, Philip Weinstein ("Weinstein"), communicated with Petitioner Ragone, who had issued the summons, to inquire about its purpose.

15. Ragone advised that the summons had been issued in aid of a criminal investigation being conducted by the IRS office in Florida and that the investigation was "strictly criminal" in nature.

16. Weinstein thereupon contacted respondent, advised him of the foregoing facts, and requested that respondent not honor the summons because it was obviously intended solely for the

purpose of obtaining evidence in a criminal investigation, was improperly issued and constituted an abuse of statutory authority by the IRS.

17. Respondent has advised that it will not oppose petitioners action to enforce this summons notwithstanding APPLESTEIN'S request.

18. Based upon the foregoing, it is apparent that the summons is being used by IRS solely for the purpose of procuring evidence in connection with a criminal investigation. Such a use is completely unauthorized and the summons is invalid.

19. Unless petitioners are enjoined from enforcing the summons, APPLESTEIN will be irreparably damaged.

20. Plaintiff has no adequate remedy at law.

WHEREFORE, APPLESTEIN prays for judgment as follows:

- 1) That the summons served by petitioners upon respondent Bank be declared null and void and of no force and effect;
- 2) That petitioners be forever enjoined from enforcing compliance with the aforesaid summons;
- 3) That respondents forever be enjoined from complying with the aforesaid summons;
- 4) That petitioners be forever enjoined from utilizing summonses to obtain information sought in contemplation of crim-

al proceedings against APPLESTEIN; and

5) for such other and further relief as the Court may
deem just and proper.

Dated: New York, New York
October 14, 1976

BALLON, STOLL & ITZLER
Attorneys for Intervenor
Office and P. O. Address
1180 Avenue of the Americas
New York, New York 10036
(212) 575-7900

By B. C. Ballon

A Member of the Firm

EXHIBIT C - NOTICE TO ALLAN H. APPELSTEIN FROM RICHARD E.
JAFFE DATED JUNE 3, 1975

41a

Department of the Treasury

Intelligence Division, Room 600

District Director

Internal Revenue Service

Date:

In reply refer to:

June 3, 1975

909:REJ

Mr. Allan H. Applestein
130 Casuarina Concourse
Coral Gables, Florida 33143

Dear Mr. Applestein:

This is to inform you that the undersigned Special Agent has been assigned to determine if any criminal violations of the tax laws have been committed by you in connection with the filing of your personal income tax returns for the years 1971 through 1973, inclusive.

Very truly yours,

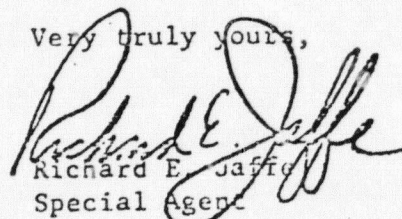

Richard E. Jaffe
Special Agent

EXHIBIT C - NOTICE TO ALLAN H. APPLESTEIN FROM RICHARD E.
JAFFE DATED JUNE 9, 1975

42a

Intelligence Division, Room 600

Internal Revenue Service

Internal Revenue Service

Date

In reply refer to:

June 9, 1975

909:REJ

▷ Mr. Allan H. Applestein
130 Casuarina Concourse
Coral Gables, Florida 33143

Dear Mr. Applestein:

This is to advise you that in addition to the Intelligence Division's investigation of your 1971 through 1973 Federal income tax returns, we will also conduct an investigation to determine if any criminal violations of the tax laws have occurred in connection with the operation of the Allan H. Applestein Foundation Trust.

Very truly yours,

Richard E. Jaffe
Richard E. Jaffe
Special Agent

BEST COPY AVAILABLE

43a

INTERVENOR'S ANSWER (Dated October 14, 1976)

(Omitted here but printed at p. 36a)

EXHIBITS ANNEXED TO FOREGOING INTERVENOR'S ANSWER

44a

EXHIBIT A - LETTER TO ALLAN H. APPLESTEIN FROM RICHARD E. JAFFE
DATED JUNE 3, 1975

(Omitted here but printed at p. 41a)

45a

EXHIBIT B - LETTER TO ALLAN H. APPLESTEIN FROM RICHARD E. JAFFE
DATED JUNE 9, 1975

(Omitted here but printed at p. 42a)

46a -48a

EXHIBIT C - SUMMONS

(Omitted here but printed at p. 35a)

AFFIDAVIT OF PHILIP T. WEINSTEIN (SWORN TO OCTOBER 21, 1976)

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF
NEW YORK

CIVIL ACTION

ALLAN H. APPLESTEIN,)

Plaintiff,)

vs.)

M & T BANK, a/k/a)

MANUFACTURERS AND TRADERS BANK,)

Defendant,)

FILE NO. 76-CIV 1443

Judge Metzner

A F F I D A V I T

STATE OF FLORIDA)

)SS

COUNTY OF DADE)

BEFORE ME, the undersigned authority, personally appeared
PHILIP T. WEINSTEIN, who being by me first duly sworn, deposes and
says:

1) I am an attorney at law, having offices at 812 Ainsley
Building, Miami, Florida 33132, duly licensed to practice in all
the courts of the State of Florida, the United States Court of Ap-
peal for the Fifth Circuit, the United States Tax Court and the
Supreme Court of the United States.

2) Your affiant is one of the attorneys for Allan H. Apple-

stein, in connection with a current criminal investigation of his income taxes being conducted by the Intelligence Division of the Internal Revenue Service, at Miami, Florida, and other places.

3) During the course of his investigation of this case, your Affiant has learned that the said case was "jacketed" on May 1975, was given the criminal N° 59-75-0209, and was assigned case level rating "V", which is the highest possible rating, and a factor rating total of 39 out of a possible maximum of 45.

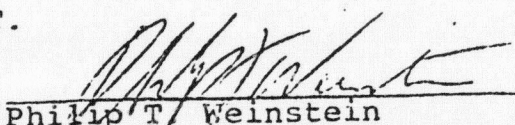
4) Sometime during the first week of March 1976, your Affiant received a copy of the Internal Revenue Summons, whose enforcement is sought in this action.

5) On March 17, 1976, I called the office of the Intelligence Division in New York (telephone number 212-264-3787) and asked to speak to Agent Robert Ragone, who had issued the Summons. I spoke to a man who identified himself as Robert Ragone, I identified myself, and I also identified my associate, Alan L. Weisberg, who was on the extension. I stated that I represented Allan H. Applestein, and that I wanted to have some information about the investigation and especially the Summons. Mr. Ragone stated that he did not know if he should be talking to us and I assured him that we had previously submitted formal power of attorney and would supply him with a copy if he wanted it. I asked Mr. Ragone what the case

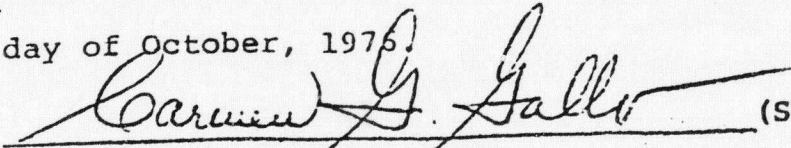
was about and he said that it was a criminal investigation arising out of Miami, that he had little knowledge of the facts and "did not want any knowledge", and that he was only acting to get the documents for the investigators in Miami. I said, well, is this a criminal or civil investigation? He answered: "strictly criminal". At that point Mr. Weisberg, who was on the extension, asked him if it was "a strictly criminal case arising out of Miami" and he said that it was. Mr. Ragone's demeanor during the remainder of the conversation indicated that he was surprised that we even asked the question, and that it was obvious that it was a criminal case.

6) Early in the course of his representation (June 1975), your Affiant interviewed a possible witness who had previously been interviewed by Special Agent Richard Jaffe, of Miami, Florida. That witness quoted Mr. Jaffee as having said during the course of the interview that we [the Intelligence Division] have been after Allan Applestein for many years and we finally got him now.

FURTHER AFFIANT SAYETH NOT.

 (SEAL)
Philip T. Weinstein

Sworn to and subscribed before me, at Miami, State and County aforesaid, this 21st day of October, 1975.

 (SEAL)

Notary Public, State of Florida at large
My commission expires Mar. 15, 1978

AFFIDAVIT OF ALAN L. WEISBERG SWORN TO OCTOBER 21, 1976 WITH 52a
AFFIDAVIT OF PHILIP T. WEINSTEIN ATTACHED (pp.52a-54a)

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF
NEW YORK

CIVIL ACTION

FILE NO. 76-CIV 1443

Judge Metzner

ALLAN H. APPLESTEIN,)
)
Plaintiff,)
)
VS.)
)
M & T BANK, a/k/a)
MANUFACTURERS AND TRADERS BANK,)
)
Defendant,)
)

A F F I D A V I T

STATE OF FLORIDA)
) SS
COUNTY OF DADE)

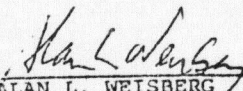
BEFORE ME, the undersigned authority, personally appeared
ALAN L. WEISBERG, who being by me first duly sworn, deposes and
says:

1) I am an attorney at law, having offices at 812 Ainsley
Building, Miami, Florida 33132, duly licensed to practice in all
the courts of the State of Florida, the United States Court of
Appeal for the Fifth Circuit, and the United States Tax Court.

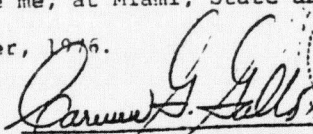
2) Your affiant is one of the attorneys for Allan H. Apple-
stein, in connection with a current criminal investigation of his
income taxes being conducted by the Intelligence Division of the
Internal Revenue Service, at Miami, Florida, and other places.

3) I have read the Affidavit of Philip T. Weinstein; a copy
of which is attached hereto and made a part hereof and do hereby
affirm the contents thereof with the exception of paragraph 6 for
which I have no personal knowledge.

FURTHER AFFIANT SAYETH NOT.


ALAN L. WEISBERG (SEAL)

SWORN to and subscribed before me, at Miami, State and County
aforesaid, this 21st day of October, 1976.


(SEAL)

8003

53a

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF
NEW YORK

CIVIL ACTION

ALLAN H. APPLESTEIN,
Plaintiff,
vs.
M & T BANK, a/k/a
MANUFACTURERS AND TRADERS BANK,
Defendant,

FILE NO. 76-CIV 1443

Judge Metzner

A F F I D A V I T

STATE OF FLORIDA)
)SS
COUNTY OF DADE)

BEFORE ME, the undersigned authority, personally appeared
PHILIP T. WEINSTEIN, who being by me first duly sworn, deposes and
says:

1) I am an attorney at law, having offices at 812 Ainsley
Building, Miami, Florida 33132, duly licensed to practice in all
the courts of the State of Florida, the United States Court of Ap-
peal for the Fifth Circuit, the United States Tax Court and the
Supreme Court of the United States.

2) Your affiant is one of the attorneys for Allan H. Apple-
stein, in connection with a current criminal investigation of his
income taxes being conducted by the Intelligence Division of the
Internal Revenue Service, at Miami, Florida, and other places.

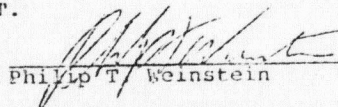
3) During the course of his investigation of this case, your
Affiant has learned that the said case was "jacketed" on May 1975,
was given the criminal N° 59-75-0209, and was assigned case level
rating "V", which is the highest possible rating, and a factor
rating total of 39 out of a possible maximum of 45.

4) Sometime during the first week of March 1976, your Affiant
received a copy of the Internal Revenue Summons, whose enforcement
is sought in this action.

5) On March 17, 1976, I called the office of the Intelligence Division in New York (telephone number 212-264-3787) and asked to speak to Agent Robert Ragone, who had issued the Summons. I spoke to a man who identified himself as Robert Ragone, I identified myself, and I also identified my associate, Alan L. Weisberg, who was on the extension. I stated that I represented Allan H. Applestein, and that I wanted to have some information about the investigation and especially the Summons. Mr. Ragone stated that he did not know if he should be talking to us and I assured him that we had previously submitted formal power of attorney and would supply him with a copy if he wanted it. I asked Mr. Ragone what the case was about and he said that it was a criminal investigation arising out of Miami, that he had little knowledge of the facts and "did not want any knowledge", and that he was only acting to get the documents for the investigators in Miami. I said, well, is this a criminal or civil investigation? He answered: "strictly criminal". At that point Mr. Weisberg, who was on the extension, asked him if it was "a strictly criminal case arising out of Miami" and he said that it was. Mr. Ragone's demeanor during the remainder of the conversation indicated that he was surprised that we even asked the question, and that it was obvious that it was a criminal case.

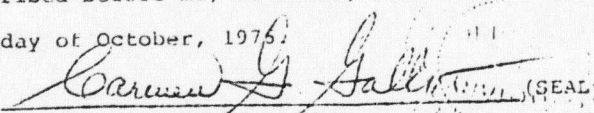
6) Early in the course of his representation (June 1975), your Affiant interviewed a possible witness who had previously been interviewed by Special Agent Richard Jaffe, of Miami, Florida. That witness quoted Mr. Jaffee as having said during the course of the interview that we [the Intelligence Division] have been after Allan Applestein for many years and we finally got him now.

FURTHER AFFIANT SAYETH NOT.


Philip T. Weinstein

(SEAL)

Sworn to and subscribed before me, at Miami, State and County aforesaid, this 21st day of October, 1976.


Carmen G. Gallo
Notary Public, State of Florida, St. Lorge
My commission expires Mar. 15, 1978

(SEAL)

AFFIDAVIT OF JAMES R. KAUFMAN SWORN TO OCTOBER 22, 1976
(pp. 55a-56a)

55a

AFFIDAVIT

STATE OF FLORIDA)
COUNTY OF DADE)

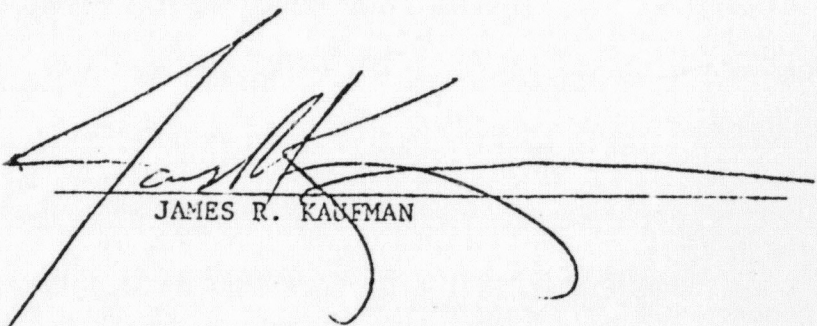
BEFORE ME appeared JAMES R. KAUFMAN whose address is 3373 Poinciana Avenue, Coconut Grove, Florida who being first duly sworn, deposes and says:

1. I am a Certified Public Accountant, a partner in the firm of Kaufman and Rossin, Certified Public Accountants whose address is 2699 South Bayshore Drive, Miami, Florida.
2. Our firm represented, in a professional capacity, Allan H. Applestein during a civil audit of his income tax liability for the calendar years 1971, 1972 and 1973.
3. In connection with the aforementioned examination, I had occasion to work with Internal Revenue Agent Milton Billig beginning on September 12, 1974 and continuing intermittently until April 7, 1975. During this period, Agent Billig worked primarily in our firm's office. During the audit we provided Agent Billig with all information in our possession which he requested including workpapers and bank records.
4. On December 14, 1974 Agent Billig obtained from our firm copies of Certificates of Deposit from First Empire Bank of New York in the names of Master Capital Corp., Little Judy Industries, and Freezer Warehouse, Inc.
5. On April 7, 1975 Agent Billig indicated that he had completed his field work and that upon the preparation of his report that he would meet with me to review his proposals.
6. On June 1, 1976, I saw Agent Billig on the street in Coconut Grove, Florida and inquired as to the status of Mr. Applestein's examination. He said he was very busy on other matters and would not have a report on Mr. Applestein's case soon. I recall his statement was "it would be a while."

56a

7. Based upon my experience in tax practice it was my impression that Mr. Billig had completed the investigative phase of the examination on April 7, 1975.

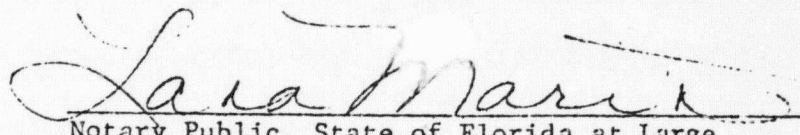
FURTHER AFFIANT SAYETH NAUGHT.



JAMES R. KAUFMAN

SWORN TO AND SUBSCRIBED before me this 22nd day of October, 1976, at Miami,
Dade County, Florida.

NOTARY PUBLIC STATE OF FLORIDA AT LARGE
MY COMMISSION EXPIRES AUG. 5 1980
BONDED THRU GENERAL INS. UNDERWRITERS



Notary Public, State of Florida at Large

AFFIDAVIT OF RICHARD E. JAFFE IN RESPONSE TO ALLEGATIONS OF 57a
PHILIP T. WEINSTEIN SWORN TO OCTOBER 28, 1976

(pp. 57a-58a)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA and
ROBERT RAGONE, Special Agent,
Internal Revenue Service,

Petitioners,

-v-

MANUFACTURERS & TRADERS BANK
(formerly FIRST EMPIRE BANK-
NEW YORK) and JAMES A. KYPRIOS,
Vice President, International
Banking, Manufacturers & Traders
Bank,

Respondents.

STATE OF FLORIDA)
COUNTY OF DADE :ss.:
CITY OF MIAMI)

RICHARD E. JAFFE, being duly sworn, deposes and says:

1. I am a duly commissioned Special Agent of the
Intelligence Division of the Internal Revenue Service,
with a post of duty in Miami, Florida, and performing my
duties under the District Director of Internal Revenue,
Jacksonville, Florida.

2. From May, 1975, until about February, 1976, I
was assigned to the investigation of the federal tax
liabilities of Allan Weinstein and various companies
and entities with which he is affiliated. During the
course of my work on this investigation, I worked with
Revenue Agent Milton Billig of the Audit Division of
the Internal Revenue Service.

3. I make this affidavit in response to allegations
made by Philip T. Weinstein in an affidavit submitted in
this action.

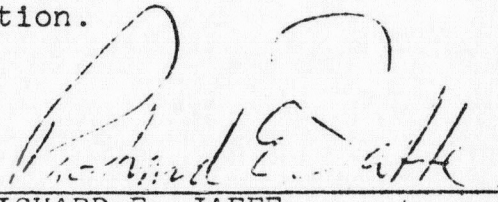
4. In particular, Mr. Weinstein asserts:

"Early in the course of his [Weinstein's]
representation (June 1975), your Affiant
interviewed a possible witness who had
previously been interviewed by Special Agent
Richard Jaffe, of Miami, Florida. That witness

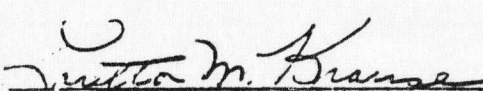
quoted Mr. Jaffee [sic] as having said during the course of the interview that we [the Intelligence Division] have been after Allan Applestein for many years and we finally got him now."

5. Even laying aside the obvious heresay contained in that allegation, Mr. Weinstein does not trouble to identify his source for this information.

6. I can recall no such conversation with anyone; indeed, I can recall no conversation which could even be remotely construed to support such a statement. In June, 1975, I had just entered the joint investigation of Mr. Applestein. I was interviewing numerous witnesses in the initial phase of the investigation, and as a normal course of conduct I would have made no statements about the status of the present investigation; I most certainly would not have made any statements about the character or supposed notoriety of any of the subjects of my investigation.


RICHARD E. JAFFE

Sworn to before me this 28th
day of October, 1976.


NOTARY PUBLIC

NOTARY PUBLIC STATE OF FLORIDA at LARGE
MY COMMISSION EXPIRES OCTOBER 16, 1979
BONDED TO THE MAYNARD BONDING AGENCY

SUPPLEMENTAL AFFIDAVIT OF ROBERT RAGONE (SWORN TO
NOVEMBER 1, 1976)

59a

(pp. 59a-61a)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
UNITED STATES OF AMERICA and :
ROBERT RAGONE, Special Agent, :
Internal Revenue Service, :

Petitioners, :

- v - :

SUPPLEMENTAL
AFFIDAVIT OF
ROBERT RAGONE

MANUFACTURERS & TRADERS BANK : M 8-85
(formerly FIRST EMPIRE BANK- :
NEW YORK) and JAMES A. KYPRIOS, :
Vice President, International :
Banking, Manufacturers & :
Traders Bank, :

Respondents. :
-----x

STATE OF NEW YORK)
COUNTY OF NEW YORK : SS.:
CITY OF NEW YORK)

ROBERT RAGONE, being duly sworn, deposes and says:

1. I am one of the petitioners in this case, and
I have previously submitted an affidavit in support of the
petition, which affidavit was sworn to on October 4, 1976.
I now reaffirm my testimony and statements made in that
affidavit.

2. I make this affidavit in order to respond to
statements made by Philip Weinstein in an affidavit
submitted in this action. In his affidavit, Weinstein
alleges:

"On March 17, 1976, I called the office
of the Intelligence Division in New York
(telephone number 212-264-3787) and asked
to speak to Agent Robert Ragone, who had
issued the Summons. I spoke to a man who
identified himself as Robert Ragone, I
identified myself, and I also identified
my associate, Alan L. Weisberg, who was
on the extension. I stated that I
represented Allan H. Applestein, and that
I wanted to have some information about
the investigation and especially the
Summons. Mr. Ragone stated that he did

not know if he should be talking to us and I assured him that we had previously submitted formal power of attorney and would supply him with a copy if he wanted it. I asked Mr. Ragone what the case was about and he said that it was a criminal investigation arising out of Miami, that he had little knowledge of the facts and 'did not want any knowledge', and that he was only acting to get the documents for the investigators in Miami. I said, well, is this a criminal or civil investigation? He answered: 'strictly criminal'. At that point Mr. Weisberg, who was on the extension, asked him if it was 'a strictly criminal case arising out of Miami' and he said that it was. Mr. Ragone's demeanor during the remainder of the conversation indicated that he was surprised that we even asked the question, and that it was obvious that it was a criminal case."

3. I did receive a call on March 17, 1976 from a man who identified himself as Phil Weinstein and who stated that he was an attorney for Allan H. Applestein. I do not recall being informed that anyone else was participating in the call. Mr. Weinstein asked me why there was a summons issued to a New York bank in this case and why there was a current investigation pending concerning his client. I stated quite simply that I did not know any of the details of the investigation and that I would not comment on it, except to say that the summons was issued at the request of Internal Revenue agents in Florida. In this respect, Mr. Weinstein is correct when he states that I "had little knowledge of the facts and . . . was only acting to get the documents for the investigators in Miami." Mr. Weinstein next asked me what my title and functions were generally. I responded that I was a Special Agent of the Internal Revenue Service, attached to the Intelligence Division in New York City, and that my duties generally involved the investigation of

criminal violations, such as tax evasion, false statements, and failure to file tax returns. At that point, the conversation ended.

4. At no time did I in any way characterize the investigation going on in Miami as either civil or criminal.

5. Thereafter, following the entry of a temporary injunction, enjoining compliance by the respondent bank with the summons issued to it on February 10, 1976, I prepared a report with respect to various occurrences related to the summons, including a summary of my conversation with Mr. Weinstein. This report was ultimately transmitted to the District Director of Internal Revenue in Jacksonville, Florida, by the Chief of the Intelligence Division of the Manhattan District of the Internal Revenue Service. A true copy of this report is annexed hereto as Exhibit "A".

ROBERT RAGONE

Sworn to before me this
November
1st day of ~~October~~, 1976.

Pauline P. Troia

Notary Public

PAULINE P. TROIA
Notary Public, State of New York
No. 31-4632391
Qualified in New York County
Commission Expires March 30, 1978

PAULINE P. TROIA
Notary Public, State of New York
No. 31-4632391
Qualified in New York County
Commission Expires March 30, 1978

EXHIBIT A - COPY OF REPORT TO INTERNAL REVENUE SERVICE ANNEXED 62a
TO FOREGOING AFFIDAVIT (pp. 62a-64a)

District Director, Internal Revenue Service
Attention: Chief, Intelligence Division
Post Office Box 35045
Jacksonville, Florida 32202

Special Agent Robert Ragone - ID:A:9
Manhattan District

ALLAN H. APPLESTEIN
Coral Gables, Florida

59-750209-R

C-MAN-5725

COLLATERAL REPLY - FINAL - To request of Special Agent ROBERT GRANT,
Jacksonville District, dated 1/29/76.

On February 10, 1976 a summons was issued to the Manufacturers & Traders Bank, formerly the First Empire Bank Of New York, requesting documents concerning ALLAN H. APPLESTEIN and several businesses. The summons was to be complied with on February 25, 1976. However, ELAINE BROWN an Assistant Vice President at Manufacturers & Traders Bank phoned Special Agent RAGONE prior to the February 25, 1976 date and asked for an extension to March 5, 1976, which was granted during the phone conversation. Then on March 2, 1976 Special Agent RAGONE received a letter from ELAINE BROWN of Manufacturers & Traders Bank requesting an additional extension of twenty business days to assemble the requested documents. Special Agent RAGONE then phoned Mrs BROWN (still March 2, 1976) and discussed the extension. During this conversation a new extension date was approved for March 26, 1976.

On March 17, 1976 at approximately 2:00 PM, Special Agent RAGONE received a phone call from PHIL WEINSTEIN in Florida, who said he was an attorney for ALLAN H. APPLESTEIN. Mr. WEINSTEIN, wanted to know why there was a summons issued on a New York City bank and why there is a current investigation pending concerning his client. Special Agent RAGONE indicated that he couldn't discuss the case, but did tell Mr. WEINSTEIN that a request came in from Florida asking for documentation from the New York City bank. Mr. WEINSTEIN then asked what Special Agent RAGONE'S title and function were. Special Agent RAGONE responded by stating that he was a Special Agent with the Internal Revenue Service, and investigated criminal violations such as tax evasion, false statements, and failure to file tax returns. After this phone call, Special Agent RAGONE notified the case agent in Florida of WEINSTEIN'S call.

BEST COPY AVAILABLE

Then on March 24, 1976, Special Agent RAGONE called Mrs BROWN at Manufacturers & Traders Bank to find out if the requested material was ready to be submitted on March 26, 1976. Mrs BROWN indicated at this time that a legal problem might exist because the bank had been contacted by APPLESTEIN'S attorney, who stated that a court restraining order was being obtained to stop the bank from issuing the requested documents to the Internal Revenue Service. Mrs BROWN, then said the bank's attorney were working on this problem and someone would contact Special Agent RAGONE later in the day. That afternoon Special Agent RAGONE received a call from Mr QUALE, Manufacturers & Traders Bank's attorney. Mr QUALE said that the requested material was ready to be submitted to the Internal Revenue Service, and that the bank would not resist the summons unless APPLESTEIN'S attorney presented the Manufacturers & Traders Bank with a court restraining order. However, Mr QUALE also added that the Manufacturers & Traders Bank would like an additional one to two days extension on the summons compliance date. QUALE, said that the bank was in a legally embarrassment position. If the bank submits the requested data to the Internal Revenue Service then APPLESTEIN will sue the bank and if they don't submit the documents to the Internal Revenue Service, then the bank will have to defend itself in a government court action. Special Agent RAGONE then told Mr QUALE that he had to discuss this situation with his superiors, and that he would be contacted the next day. Approximately five minutes after speaking to Mr QUALE, Special Agent RAGONE received a phone call from Mr ROBSON. ROBSON identified himself as ALLEN APPLESTEIN'S New York attorney. He also requested a one day extension on the summons compliance date. ROBSON, indicated that he could secure the restraining order in the time left on the summons compliance date, but it would cause an undue burden. ROBSON also pointed out that he's an ex-New York United States Attorney. ROBSON, was then told by Special Agent RAGONE that he had to discuss this situation with his superiors.

On March 25, 1976, Special Agent RAGONE explained the legal problems to Mr L. ZEIGLER of Regional Counsel at 26 Federal Plaza, New York, New York. Mr ZEIGLER consulted with other counsellors, and decided it was in the government's best interest to extend the summons compliance date one additional day to March 29, 1976 at 10:00 AM. Mr ZEIGLER then told Special Agent RAGONE to call the Manufacturers & Traders Bank and notify them of the additional one day extension. Special Agent RAGONE in the presence of Mr ZEIGLER then telephoned Mr QUALE, the attorney for the Manufacturers & Traders Bank and notified him of the one day extension and also requested a letter from the bank stating that they acknowledge the extension requested by the Manufacturers & Traders Bank.

On March 29, 1976, Special Agent RAGONE acquired from Mr QUALE at 200 Park Avenue, New York, New York, a copy of the restraining order that was issued

64a

to Manufacturers & Traders Bank. The following morning March 30, 1976, Special Agent RAGONE brought the copy of the restraining order to Mr ZEIGLER at Regional Counsel. Mr ZEIGLER then told Special Agent RAGONE that the legal problem is being transferred from the Manhattan Regional Counsel's office to the Florida Regional Counsel's office for appropriate action.

Robert Ragone
F.T.S. 264-3786

Attachments:

- 1) Summons issued to the Manufacturers & Trader Bank
- 2) A copy of the restraining order served on the Manufacturers & Traders Bank
- 3) A letter from Manufacturers & Traders Bank dated March 1, 1976
- 4) A letter from Manufacturers & Traders Bank dated March 25, 1976
- 5) A note concerning a telephone call with PHIL WEINSTEIN

Approved:

(signed) William L. DePugh

William J. DePugh
Chief, Intelligence Division
Manhattan District

Post Office Box 558
Church Street Station
New York, New York 10008

AFFIDAVIT OF MILTON BILLIG IN RESPONSE TO ALLEGATIONS MADE BY 65a
JAMES R. KAUFMAN SWORN TO OCTOBER 28, 1976 8056
(pp.65a-67a)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA and
ROBERT RAGONE, Special Agent,
Internal Revenue Service,

Petitioners,

-v-

MANUFACTURERS & TRADERS BANK
(formerly FIRST EMPIRE BANK-
NEW YORK) and JAMES A. KYPRIOS,
Vice President, International
Banking, Manufacturers & Traders
Bank,

Respondents.

AFFIDAVIT OF
MILTON BILLIG
11-8-85 (CMH)

STATE OF FLORIDA)
COUNTY OF DADE :ss.:
CITY OF MIAMI)

MILTON BILLIG, being duly sworn, deposes and says:

1. I am a duly commissioned Revenue Agent of the Audit Division of the Internal Revenue Service, with a post of duty in Miami, Florida, and performing my duties under the District Director of Internal Revenue, Jacksonville, Florida.

2. I make the affidavit in response to several allegations made by James R. Kaufman in an affidavit submitted in this action.

3. From September 10, 1974 until the present, I have been involved in an investigation of the federal tax liabilities of Allan H. Applestein and various companies and entities in which he has an interest. Although this investigation began as a civil audit of the taxpayer, Applestein, it was expanded in May, 1975 into a joint investigation, encompassing both civil audit and criminal aspects of the taxpayer's affairs. From May 1975 until the present, I have worked jointly with Special Agents of the Intelligence Division, First Special Agent Richard Jaffe and later Special Agent Robert Grant.

4. Mr. Kaufman asserts in his affidavit:

"On April 7, 1975 Agent Billig indicated that he had completed his field work and that upon the preparation of his report that [sic] he would meet with me to review his proposals."

5. Mr. Kaufman further asserts:

"On June 1, 1976, I saw Agent Billig on the street in Coconut Grove, Florida and inquired as to the status of Mr. Applestein's examination. He said he was very busy on other matters and would not have a report of Mr. Applestein's case soon. I recall his statement was 'it would be a while'."

6. From these allegations, Mr. Kaufman draws the conclusion that the investigative phase of the civil audit was completed on April 7, 1975. This conclusion is entirely unwarranted. On the contrary, it was shortly after this date that the investigation which I had been conducting alone became a joint investigation, involving the Audit and Intelligence Divisions, a joint investigation which continues to this date. Thus, for example, information now being gathered bears directly upon and will be used by the Audit Division in considering the assertion of civil fraud penalties against taxpayers. In short, the audit portion of the joint investigation is still very much open.

7. Accordingly, I also dispute the statement of one Kenneth Miller, who has also submitted an affidavit in this case. Mr. Miller blithely states, under oath, that

"In point of fact, prior to and in or about September 1974 the Internal Revenue Service (IRS) conducted and closed a civil audit of Applestein's tax returns for the years 1971, 1972, and 1973. During the audit, Applestein was told that no criminal or fraud investigation was being conducted in conjunction therewith."

8. To begin with, the affidavit of Mr. Kaufman directly contradicts the assertion of Mr. Miller, by showing that, at least until April of 1975, I was engaged in an audit of the taxpayer's records. More important, I have never closed

any part or portion of any phase of the joint investigation into the federal tax liabilities of Applestein and the companies and entities in which he has an interest.

Milton Billig
MILTON BILLIG

Sworn to before me this 28th
day of October, 1976.

Leatrice M. Kline
NOTARY PUBLIC

NOTARY PUBLIC STATE OF FLORIDA at LARGE
MY COMMISSION EXPIRES OCTOBER 15, 1979
SIGNED THIS MAYNARD BONDING AGENCY

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

NOV 23 1976

9 17 AM
S. D. OF N. Y.

----- X
UNITED STATES OF AMERICA and
ROBERT RAGONE, Special Agent,
Internal Revenue Service,

Petitioners,

-against-

MANUFACTURERS & TRADERS BANK
(Formerly FIRST EMPIRE BANK-NEW
YORK) and JAMES A. KYPRIOS, Vice
President, International Banking,
Manufacturers & Traders Bank,

Respondents.
----- X

METZNER, D. J.:

The court is here concerned with problems arising in connection with the issuance and judicial enforcement of an internal revenue summons directed to someone other than the individual taxpayer.

Special Agent Robert Ragone, assisting in a joint civil-criminal investigation being conducted into the federal income tax liabilities of Allan H. Applestein and of entities in which he has an interest, issued a summons on February 10, 1976 directing Manufacturers & Traders Bank and James A. Kyrios, Vice President, to produce for examination certain books, records and papers concerning any transactions between the Bank and Applestein and these business entities. Agent Ragone was acting under the authority of 26 U.S.C. § 7602.

On March 10, 1976, this court granted Applestein's application temporarily and preliminarily enjoining the Bank from complying with the summons, after argument by Applestein's counsel to which there was no opposition.

On October 15, 1976, the United States, pursuant to 26 U.S.C. §§ 7402(b) and 7604(a), filed a petition with this court for the judicial enforcement of the summons directed to Manufacturers & Traders Bank and James A. Kypricos, Vice President. The petition was supported by affidavits of Special Agents Robert Ragone and Robert Grant. Additional affidavits were filed on November 1, 1976 by Milton Billig, Revenue Agent of the Audit Division of the Internal Revenue Service, and Richard E. Jaffee, Special Agent of the Intelligence Division. These affidavits are to the effect that Internal Revenue agents are conducting an active joint civil and criminal investigation of Allen H. Applestein and of companies and entities in which he has an interest.

In response to the government's order to show cause, the taxpayer, pursuant to Rule 24, Federal Rules of Civil Procedure, filed a motion to intervene in the enforcement proceedings. In the accompanying affidavits, he alleged that the Internal Revenue agents were guilty of bad faith in asserting that they were conducting a joint investigation and that the sole purpose of the investigation was for criminal prosecution.

Taxpayer's application to permit him to intervene in this action is denied. The summons here is directed to a third party with respect to whom no established legal privilege, such as that of attorney and client, exists, and has to do with records in which the taxpayer has no proprietary interest. Donaldson v. United States, 400 U.S. 517 (1971); United States v. A. L. Burbank & Co., Ltd., 525 F.2d 9, 17 (2d Cir. 1975). Section 1205 of the 1976 Tax Reform Act cited by the taxpayer, does not apply to summonses issued in 1976.

Government's petition to compel Manufacturers & Traders Bank and James A. Kyrios, Vice President, to obey the internal revenue summons is granted. There has been no recommendation for criminal prosecution. The summons here is part of an investigation that is likely to lead to civil liability as well as criminal prosecution. The affidavits are insufficient to support allegations that the summons was issued in bad faith. Under 26 U.S.C. § 7602, an internal revenue summons may be issued in aid of an investigation if it is issued in good faith and prior to a recommendation for criminal prosecution. Donaldson, supra at 536.

So ordered.

Dated: New York, N. Y.
November 22, 1976

CHARLES M. METZNER
U. S. D. J.

NOTICE OF APPEAL

71a

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
UNITED STATES OF AMERICA and ROBERT
RAGONE, Special Agent, Internal Revenue
Service,

Index No. M8-85
(CMM)

Petitioners,

NOTICE
OF
APPEAL

-against-

MANUFACTURERS & TRADERS BANK (formerly
FIRST EMPIRE BANK-NEW YORK) and JAMES
A. KYPRIOS, Vice President, International
Banking, Manufacturers & Traders Bank,

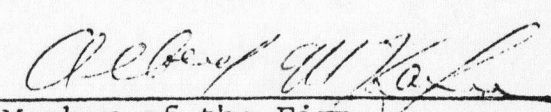
Respondents.
-----X

NOTICE is hereby given that ALLAN H. APPLESTEIN,
proposed intervenor, hereby appeals to the United States Court
of Appeals for the Second Circuit from the Order denying his
Application to Intervene herein and granting the Government's
Petition to enforce the Internal Revenue Summons directed to
Manufacturers & Traders Bank and James A. Kyprios, Vice
President, entered in this action on the 22nd day of November,
1976.

Dated: New York, New York
November 26, 1976.

BALLON, STOLL & ITZLER
Attorneys for Proposed
Intervenor, Allan H. Applestein

By:


A Member of the Firm
1180 Avenue of the Americas
New York, New York 10036
(212) 575-7900

APPELLATE DIVISION
SECOND DEPARTMENT

UNITED STATES OF AMERICA and ROBERT RAGONE,
Special Agent, Internal Revenue Service,
Petitioners-Appellees,

Index No.

- against -

**MANUFACTURES & TRADERS BANK, (formerly First
Empire Bank-N. Y.) and JAMES A. KYPRIOS, Vice
President, International Banking, Manufacturers &
Traders Bank,**
Respondents.,

Affidavit of Personal Service

ALLAN H. APPLESTEIN, Proposed Intervenor-Appellant
On Appeal from the U.S. Dist. Court, So. Dist. of N.Y.

STATE OF NEW YORK, COUNTY OF

NEW YORK

ss.:

I, Reuben A. Shearer being duly sworn,
depose and say that deponent is not a party to the action, is over 18 years of age and resides at
211 West 144th Street, New York, New York 10030

That on the 7th day of January 1977 at 1 St. Andrews Plaza
New York, N.Y. 10007

deponent served the annexed *appellants*

Mr. Robert Fiske
U.S. Attorney-So. Dist.

upon

the in this action by delivering a true copy thereof to said individual
personally. Deponent knew the person so served to be the person mentioned and described in said
papers as the herein,

Sworn to before me, this 7th
day of January, 19 77

Robert T. Brin

Reuben Shearer
Reuben Shearer

ROBERT T. BRIN
NOTARY PUBLIC, State of New York
No. 31-0418950
Qualified in New York County
Commission Expires March 30, 1977